



Deacons

ORIGINAL WORKING COPY

Dated

26 June 2008

## Master Consolidated Trust Deed

### Media Super

**Media Super Limited** ABN 30 059 502 948

Commenced	28 January 1981 (as amended)
Amended:	1 December 2004 (replacement)
Amended:	2 September 2005
Amended:	4 May 2006
Amended:	14 December 2006
Amended:	23 April 2008
Amended:	26 June 2008

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**Deacons**

**Master Consolidated Trust Deed** dated 1 July 2008

**Party:** **Media Super Limited** ABN 30 059 502 948 of Level 18, 83 Clarence Street, Sydney, New South Wales, 2000<sup>1</sup>  
(Trustee)

**Explanatory Notes:**

- A. The Trustee established the fund known as Media Super (**Fund**)<sup>2</sup> by a declaration of trust dated 28 January 1981.
- B. On 1 December 2004 the trust deed for the Fund (**Trust Deed**) was replaced. Since then the Trust Deed has been amended from time to time.
- C. The Trustee is the current trustee of the Fund.
- D. The Trustee has power under Rule 12 of the Trust Deed to amend any of the provisions of the Trust Deed.

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<sup>1</sup> Amended by Deed of Amendment dated 14 December 2006 effective 10 May 2006

<sup>2</sup> Amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

## Section 1

### Management and Administration

#### Part 1

##### 1. Interpretation - Definitions

In this Deed and Rules unless the context otherwise requires:

- (1) **Account** means the Member's Employer Accounts and Member Accounts established in respect of a Member in accordance with Rule 5 of Division 1, Rule 5 of Division 2 and Rule 7 of Division 3;
- (2) **Account Based Pension** means a Pension payable on the terms stipulated in Rule 12 of Division 4 of this Deed or as otherwise payable under the terms of the Relevant Law;<sup>3</sup>
- (3) **Actuary** means the actuary (if any) for the time being appointed pursuant to this Deed;
- (4) **Administrator** means the Manager or other organisation appointed as Administrator of the Fund in accordance with Clause 23.2;
- (5) **AFS Licence** means an Australian Financial Services Licence;
- (6) **Annuity** means an annuity as defined for the purposes of the Relevant Law;
- (7) **Application Date** in relation to a Unit means the date on which the Trustee accepts a Contribution for a Member;
- (8) **Application Price** in relation to a Unit means the value of the Unit determined under Clause 11.3;
- (9) **Approved Benefit Arrangement** means a superannuation fund or benefit arrangement including the Fund pursuant to an Internal Roll Over request and including without limitation another Complying Superannuation Fund, an Approved Deposit Fund, Retirement Savings Account and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to

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<sup>3</sup> The definition of "Account Based Pension" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

comply with the Relevant Law and includes an Eligible Rollover Fund;

- (10) **Approved Deposit Fund** in relation to a year of income means a fund which is a complying Approved Deposit Fund in accordance with the Tax Act;
- (11) **Approved Trustee** means a Constitutional Corporation in relation to which an approval under Part 2 of the *Superannuation Industry (Supervision) Act 1993* is in force;
- (12) **Associated Employer** means a company or person associated with an Employer which wishes to contribute to the Fund on behalf of Employees of the Employer;
- (13) **Association** means the Printing Industries Association of Australia;
- (14) **Auditor** means the auditor for the time being appointed under Clause 23.1 of this Deed and approved under the Relevant Law;
- (15) **Authorised Representative** has the same meaning as in the *Corporations Act 2001*;
- (16) **Badged Division** means any Division established under Clause 3.9;
- (17) **Beneficiary** means a person presently and absolutely entitled to receive a Benefit at the relevant time and shall include a Pensioner;
- (18) **Benefit** means any amount which is payable by the Trustee out of the Fund in accordance with this Deed to or in respect of a Member;
- (19) **Benefit Entitlement** means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;
- (20) **Child** in relation to a Member or former Member, includes:
  - (a) a child being the Member's or former Member's child or a child of the Member's or former Member's spouse (legitimate or illegitimate);
  - (b) a step-child; or

- (c) a lawfully adopted child.
- (21) **Commencement Date** means 28 January 1981;
- (22) **Complying Superannuation Fund** in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law;
- (23) **Constitutional Corporation** has the same meaning as defined for the purposes of the Relevant Law;
- (24) **Contributions** means gross payments, deposits or contributions including Superannuation Lump Sums to the Fund by Members, Spouses of Eligible Persons or Members and Employers in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those Contributions and includes a Government Co-contribution;<sup>4</sup>
- (25) <sup>5</sup>**Contributions-Splitting Superannuation Benefit** has the same meaning as under the Relevant Law.<sup>6</sup>
- (26) **Custodian** means a company appointed as custodian of the Fund in accordance with Clause 23.4 and “Sub-Custodian” shall have a corresponding meaning;
- (27) **Deed** means this Deed and any Rules made under this Deed;
- (28) **Dependant** in relation to a Member means:
- (a) the Spouse of the Member;
  - (b) the Child of the Member;
  - (c) a person who was wholly or partially financially dependent on the Member at the date of death; or
  - (d) any other person who, in the opinion of the Trustee, is or was a dependant of the Member at the date of death within the meaning of that term in section 10 of the *Superannuation Industry (Supervision) Act 1993*;

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<sup>4</sup> The definition of “Contributions” was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>5</sup> The definition of “Contributions-Splitting ETP” was inserted by Deed of Amendment dated 4 May 2006, effective date 1 January 2006 and was subsequently deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>6</sup> The definition of “Contributions-Splitting Superannuation Benefit” was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (29) **Directed Termination Payment** has the same meaning as under the Tax Act;<sup>7</sup>
- (30) **Directors** means the directors or board of management for the time being of the Trustee, and **Director** has a corresponding meaning;
- (31) **Disclosure Document** means any document issued by the Trustee offering participation or Membership in a Division in accordance with the Relevant Law;
- (32) **Eligible Person** means any person who is engaged in Part-Time Gainful Employment or Full-Time Gainful Employment or who is otherwise permitted to become a Member of the Fund pursuant to this Deed by the Relevant Law and shall include a Spouse (within the meaning of paragraph (b) of the definition of "Spouse") of a person, Eligible Person or a Member;
- (33) **Eligible Rollover Fund** has the same meaning as contained in Part 24 of the *Superannuation industry (Supervision) Act 1993*;
- (34) <sup>8</sup>**Employee** means a person in the employment of an Employer and who is:
- (a) a director or secretary (in the case of a corporation) of that Employer; or
  - (b) classified by the Employer as an Employee for the purposes of this Deed;
  - (c) a person who is an Employee of the Employer for the purposes of the *Guarantee Act*.
- (35) **Employer** means a company, person, firm or any other employer of an Employee or of a Member and in relation to an Employee or Member means the Employer of such Employee or Member;
- (36) **Financial Assistance** means financial assistance granted to the Fund under Part 23 of the *Superannuation Industry (Supervision) Act 1993*;
- (37) **Financial Year** means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

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<sup>7</sup> The definition of "Directed Termination Payment" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>8</sup> The definition of "Eligible Termination Payment" was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (38) **FLA Eligible Person** means a person who is eligible pursuant to the *Family Law Act 1975* to request information in respect of an Account of a Member;
- (39) **Forfeiture Account** means the account established pursuant to Clause **Error! Reference source not found.**;
- (40) **Former Employee** means a person who was in the Service of an Employer and includes a Director;
- (41) **Full-Time Gainful Employment** in relation to a Member means a Member who is Gainfully Employed for more than 30 hours per week within the meaning of the Relevant Law;
- (42) **Fund** means Media Super (previously known as the Printing Industry Superannuation Fund established by a deed dated 28 January 1981 as varied from time to time;<sup>9</sup>
- (43) **Fund Investment Pool** means any pool of investments (including investment income) comprising the Units or assets held in respect of a particular investment option established by the Trustee;
- (44) **Fund Year** means a period of twelve months ending on 30 June, or such other period of twelve months ending on such other date as the Trustee may determine from time to time;
- (45) **Gainful Employment** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Law and "Gainfully Employed" shall have a corresponding meaning;
- (46) **Government Co-contribution** means contributions made pursuant to the *Superannuation (Government Co-Contribution for Low-Income Earners) Act 2003*;
- (47) **GST** means any goods and services tax payable by the Fund pursuant to *A New Tax System (Goods and Services Tax) Act 1999*;
- (48) **Guarantee Act** means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made under that Act;
- (49) **Industrial Award** has the same meaning as in the *Guarantee Act*;
- (50) **Insurer** means any insurer with whom the Trustee effects a Policy or Policies;

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<sup>9</sup> The definition of "Fund" was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

- (51) **Insured Benefit** means the amount (if any) payable on the Member's death, Total and Permanent Disablement or Temporary Total Disablement under any Policy of insurance maintained by the Trustee for that Member;
- (52) **Internal Roll Over** means the transfer pursuant to Clause 26.3 of a Member's Benefit Entitlement from one Division of the Fund to another Division of the Fund;
- (53) **Investment Fluctuation Reserve** means an account maintained under Clause 9.2;
- (54) **Investment Manager** means a person appointed as an Investment Manager of the Fund in accordance with Clause 23.3;
- (55) **Investment Transaction Costs** in relation to a Unit means the cost of acquiring the Unit;
- (56) **Leaving Service Benefit** means a Benefit payable in accordance with Rule 6.1 of Division 1, Rule 6.1 of Division 2 or Rule 8.5 of Division 3;
- (57) **Legal Personal Representative** has the meaning attributed to that term in section 10 of the *Superannuation Industry (Supervision) Act 1993*;
- (58) **Levy** includes a levy payable by the Fund to the Regulator in accordance with the *Superannuation Supervisory Levy Act 1998*, the *Superannuation (Financial Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Fund;
- (59) **Lost Member** means a Member who is a lost member pursuant to the Relevant Law;
- (60) **Mandated Employer Contributions** has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*;
- (61) **Maximum Splittable Amount** means:<sup>10</sup>
- (a) for Taxed Splittable Contributions the lesser of:
    - (i) 85% of the Taxed Splittable Contributions for the relevant financial year; and
    - (ii) the concessional contributions cap for that financial year;

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<sup>10</sup> The definition of "Maximum Splittable Amount" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

- (b) for Untaxed Splittable Contributions 100% of such contributions made in the relevant financial year; or
  - (c) such other amounts as stipulated in the Relevant Law.<sup>11</sup>
- (62) **Member** means an Eligible Person who has been accepted as a Member of a Division of the Fund under Clause 6 and who has not ceased to be a Member under Clause 6.10 and **Membership** means Membership of a Division of the Fund;
  - (63) **No-TFN Contributions Income** has the same meaning as in the Relevant Law;<sup>12</sup>
  - (64) **Nominated Beneficiary** means a person nominated in writing by a Member to the Trustee as the nominated beneficiary;
  - (65) **Non Member Spouse** has the same meaning as in the *Superannuation Industry (Supervision) Regulations 1994*;
  - (66) **Non-Preserved Amount** means an amount including a Roll Over Payment payable to or in respect of a Member or Beneficiary which is not subject to any cashing restrictions under Part 6 of the *Superannuation Industry (Supervision) Regulations 1994* at the time of payment;
  - (67) **Normal Retirement Age** means the age of 65 years or such other age being not less than the Preservation Age as is acceptable to or required by the Relevant Law and as the Trustee with the consent of the Employer of that Member shall determine;
  - (68) **Officer** means a Director, secretary or executive officer of the Trustee;
  - (69) **Participating Employer** means any person, firm or corporation that by agreement with the Trustee is admitted to participation in the Fund under Clause 6.1;
  - (70) <sup>13</sup>**Part-Time Gainful Employment** in relation to a Member means a Member who is employed for more than 10 hours per week but less than 30 hours per week or a Member who fulfils any other requirements specified in the Relevant Law;

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<sup>11</sup> The definition of "Maximum Splittable Amount" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>12</sup> The definition of "No-TFN Contributions Income" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>13</sup> The definition of "Part-Time Equivalent Level" was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (71) **Payment Flag** has the same meaning as in the *Family Law Act 1975*;
- (72) **Payment Split** has the same meaning as the *Family Law Act 1975*;
- (73) **Pension** includes a Benefit payable by instalments out of the Account or the Pension Account of a Member or Beneficiary whether such instalments be equal or unequal;
- (74) **Pension Account** means the account established in respect of a Pensioner in accordance with Rule 6 or Rule 12 or 13 of Division 4;<sup>14</sup>
- (75) **Pensioner** means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension;
- (76) **Policy** means any policy of insurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy with an Insurer and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that Insured Benefits shall be payable to the Trustee on the death or disablement of a Member;
- (77) **Policy Committee** has the same meaning as set out in the Relevant Law;
- (78) **Preservation Age** has the same meaning as in the Relevant Law;
- (79) **Preserved Payment** means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in this Deed in order for the Fund to be a Complying Superannuation Fund and **Preserved Payment Benefit** means a Benefit arising from a Preserved Payment;
- (80) **Regulator** means, as the case requires, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office, or such other regulatory body as shall have responsibility for administration and regulation of superannuation;

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<sup>14</sup> The definition of "Pension Account" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (81) **Relative** in relation to a Member or former Member means any of the following, namely:
- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member; and
  - (b) the Spouse of any person specified in paragraph (a);
- (82) **Release Authority** means a documented authority issued by the Commissioner of Taxation stating the amount of excess contributions tax that a Member of the Fund is liable to pay;<sup>15</sup>
- (83) **Relevant Law** means any requirement under the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Superannuation (Resolution of Complaints) Act 1993*, the *Tax Act*, the *Family Law Act 1975*, the *Corporations Act 2001* and the *Corporations Regulations 2001* and any other present or future legislation which the Trustee must comply with in order for the Fund:
- (a) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
  - (b) to meet any other requirements of the Regulator,
- and includes any proposed requirements, rulings, announcement or obligations which the Trustee believes will have effect retrospectively;
- (84) **Retirement Savings Account** has the meaning assigned to that expression in section 8 of the *Retirement Savings Account Act 1997*;
- (85) **Reversionary Beneficiary** means an eligible Dependant nominated by a Pensioner and in default of a nomination by the Pensioner, a Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Pensioner;<sup>16</sup>
- (86) **Reversionary Pension** means a Pension paid to a Reversionary Beneficiary;
- (87) **Roll Over Payment** means any payment made by or received by the Trustee at the request of a Member or former Member or in

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<sup>15</sup> The definition of "Release Authority" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>16</sup> The definition of "Reversionary Beneficiary" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

other circumstances which satisfy the Relevant Law to or from any Approved Benefit Arrangement and shall include a Directed Termination Payment by an Employer in consequence of the termination of the employment of a Member and either a capital gains tax exempt amount or a rollover superannuation benefit in relation to a Member under the Tax Act;<sup>17</sup>

- (88) **RSE Licence** means the Registrable Superannuation Entity Licence as defined in the *Superannuation Industry (Supervision) Act 1993*;
- (89) **Rules** means the rules of each Division of the Fund;
- (90) **Self-Employed Person** means an Eligible Person who is not an Employee and who is Gainfully Employed;
- (91) **Service** means continuous service with an Employer and includes:
  - (a) any period during which the Member is not attending employment because of injury or illness and is receiving workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme sponsored by the Employer; and
  - (b) any other period declared by the Employer to be Service, and

for the purposes of this definition an Employee's Service shall not cease to be continuous by reason of a transfer from the service of one employer to that of another employer where each of the employers concerned is one of a group of employers consisting of an Employer and subsidiary and associated Employers;

- (92) **Shortfall Component** has the same meaning as contained in section 64 of the *Guarantee Act*;
- (93) **Small Balance Member** means a Member in respect of whom the Trustee is restricted under the Relevant Law in charging to the Member's Account amounts in respect of the costs and expenses of administration of the Fund by virtue of the size and composition of the balance of the Member's Account and may include a Member in respect of whom the Trustee is not so restricted but who is in a category of members which the Trustee has determined that due to the size and composition of the balance of

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<sup>17</sup> The definition of "Roll Over Payment" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

their Member's Accounts, those Members are to be treated as if so restricted;

- (94) **Splittable Contribution** means a Contribution to the Fund or an allocated surplus amount (as defined in the Relevant Law) allocated on or after 1 January 2006 but does not include:
- (a) an amount that has been rolled over or transferred to the Fund;
  - (b) an amount that has been allotted to or rolled over within the Fund due to a contributions splitting application under the Relevant Law;
  - (c) a lump sum payment from a foreign superannuation fund;
  - (d) such other amounts as prescribed by the Relevant Law.<sup>1819</sup>
- (95) **Splittable Payment** has the same meaning as in the *Family Law Act 1975*;
- (96) **Splitting Order** has the same meaning as in the *Family Law Act 1975*;
- (97) **Spouse** means:
- (a) in relation to the definitions of Dependant and Relative:
    - (i) a person legally married to a Member; or
    - (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them; or

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<sup>18</sup> The definition of "Splittable Contribution" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

<sup>19</sup> The definition of "Splittable Contribution" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (b) in relation to the definition of Contributions and Eligible Person, and for the purposes of Clauses 6.4(3), 25.14, 26A and 27A, Rule 4.2 of Division 1, Rule 4.2 of Division 2 and Rule 6.2 of Division 2, a person who is legally married to the Member or that person otherwise being presumed under the Relevant Law to be the spouse of the Member;
  - (c) for the purpose of Clause 40 a person who is legally married to the Member or that person otherwise being presumed under the *Family Law Act 1975* to be a spouse of the Member;<sup>20</sup>
- (98) **Successor Fund** has the same meaning as contained in Regulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994*;
  - (99) **Superannuation Agreement** has the same meaning as in the *Family Law Act 1975*;
  - (100) **Superannuation Lump Sum** has the same meaning as in the Relevant Law;<sup>21</sup>
  - (101) **Tax Act** means the *Income Tax Assessment Acts 1936 and 1997* (as amended) and any regulations issued under those Acts.<sup>22</sup>
  - (102) **Taxation** includes any contributions tax, income tax, any surcharge or other amount of whatever description levied on the Fund, the Trustee, any Member, former Member or Beneficiary pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including any provisional or advance payments required under that legislation), capital gains tax, tax on Superannuation Lump Sums, payroll tax, land tax, stamp duty, GST and any other taxes or duties of whatever description paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member or Beneficiary;<sup>23</sup>
  - (103) **Tax File Number** has the same meaning as in the Relevant Law;<sup>24</sup>

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<sup>20</sup> The definition of "Spouse" was amended by Deed of Amendment dated 4 May 2006, effective date 4 May 2006

<sup>21</sup> The definition of "Superannuation Lump Sum" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>22</sup> The definition of "Tax Act" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>23</sup> The definition of "Taxation" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>24</sup> The definition of "Tax File Number" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (104) **Taxed Splittable Contribution** is a Contribution to the Fund which is taxable under the Tax Act or a Contribution that would be taxable under that section but for the Commonwealth Government's inability to tax the property of a State or an allocated surplus Contribution (as defined in the Relevant Law) or such other amounts stipulated by the Relevant Law;<sup>2526</sup>
- (105) **Temporary Total Disablement** has the same meaning as contained in any Policy effected by the Trustee with an Insurer for this purpose in respect of the Member and in force at the time of the Temporary Total Disablement of the Member and the expression **Temporarily Totally Disabled** shall have a corresponding meaning;
- (106) **Total and Permanent Disablement** has the same meaning as contained in any Policy effected by the Trustee with an Insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member and the expression **Totally and Permanently Disabled** shall have a corresponding meaning;
- (107) **Transition to Retirement Income Stream** means a Pension payable on the terms of Rule 13 of Division 4 of this Deed or as otherwise payable under the Relevant Law;<sup>27</sup>
- (108) **Tribunal** means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993*;
- (109) **Trustee** means the Trustee for the time being of the Fund whether original, additional or substituted which are appointed in accordance with Clause 17 of this Deed;
- (110) **Unclaimed Benefits** means those Benefits described as "unclaimed money" under Part 22 of the *Superannuation Industry (Supervision) Act 1993*;
- (111) **Union** means either or both the Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union (AMWU (Printing Division)) and the Media, Entertainment and Arts Alliance

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<sup>25</sup> The definition of "Taxed Splittable Contribution" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

<sup>26</sup> The definition of "Tax Splittable Contribution" was varied by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>27</sup> The definition of "Transition to Retirement Income Stream" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

or any organisation or association formed in reconstruction of or in succession to these unions;<sup>28</sup>

- (112) **Unit** means the interest of a Member or Beneficiary under the Rules of a Division or in respect of a particular Fund Investment Pool;
- (113) **Untaxed Splittable Contribution** is a Contribution made to the Fund which is not a taxable Contribution under the Tax Act and has been made prior to 6 April 2007 or such other amounts stipulated by the Relevant Law;<sup>2930</sup>
- (114) **Withdrawal Benefit** means in respect of a Member, the sum of the amounts calculated by multiplying the Units allocated by the Trustee in each investment option to the Member by the Withdrawal Price for the Units in that investment option at the relevant time and, if the Benefit relates to a Death and Total and Permanent Disablement Benefit, any Insured Benefit;
- (115) **Withdrawal Date** in relation to a Unit means the date on which the Trustee cancels Units allocated to a Member;
- (116) **Withdrawal Price** in relation to a Unit means the value of the Unit determined under Clause 11.4;
- (117) **Withdrawal Transaction Costs** in relation to a Unit means the cost of disposing of the Unit.

## 2. Interpretation - General

### 2.1 Plural of words

In this Deed, unless inconsistent with the subject matter or context, words importing the singular number shall include the plural number and vice versa.

### 2.2 Headings to Clauses

The headings in this Deed are for convenience only and shall not affect the interpretation of this Deed.

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<sup>28</sup> The definition of "Union" was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>29</sup> The definition of "Untaxed Splittable Contribution" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

<sup>30</sup> The definition of "Untaxed Splittable Contribution" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

### **2.3 Defined words**

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

### **2.4 Statutory enactments**

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

### **2.5 Fund Subject to Relevant Law**

This Deed shall be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Deed to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Regulator and this Deed shall be further read and construed on the basis that:

- (1) where there is any inconsistency between a provision in this Deed and a provision under the Relevant Law the latter shall prevail to the extent of the inconsistency;
- (2) in the event of any doubt arising as to the effect of a Relevant Law or if there is an inconsistency between the Relevant Law and a provision of this Deed, the decision of the Trustee shall be final,

PROVIDED THAT this Deed shall not be so read or construed and no such provision of the Relevant Law shall be so incorporated if to do so would constitute a breach of the power granted by Clause 34 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

### **2.6 Requirements of Regulator**

Any references to any requirements, consents or approvals being required to be given by the Regulator or for the purposes of satisfying the Relevant Law shall mean requirements, consents or approvals of the Regulator or under the Relevant Law.

## **2.7 Superannuation Guarantee Legislation**

The Trustee shall administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and shall provide all such certificates, reports and other information as shall be required by the Guarantee Act.

## **2.8 Australian Currency**

All Benefits shall be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustee.

## **2.9 Payment to Third Parties**

- (1) Where a Member is eligible to be paid an amount or is able to direct where this amount should be transferred to, then any direction by that Member that the payment/transfer (or part of the payment) be paid/transferred to a third party as directed by that Member, that amount shall be deemed to have been received by the Member as if the payment/transfer had been made to that Member.
- (2) The payment or transfer by the Trustee will constitute a full discharge of its liability to the Member.

## **Part 2**

### **3. The Fund**

#### **3.1 Establishment of Fund**

The Fund known as the Printing Industry Superannuation Fund was established by a deed dated 28 January 1981 as varied from time to time.

#### **3.2 Assets of the Fund**

The assets of the Fund shall vest in the Trustee upon trust or apply the same in the manner set forth in this Deed.

#### **3.3 Sections and Divisions within the Fund**

The Trustee may from time to time establish and vary Sections and Divisions of the Fund and the Trustee may acquire certain assets or determine that certain assets are held in respect of a particular Division or in respect of particular Employers or Members of a particular Division.

### 3.4 Allocation of Assets

If the Trustee acquires certain assets or determines that certain assets are held in respect of a particular Division or in respect of particular Employers or Members of a Division then those assets shall only be available for the purposes of that Division or those Employers or Members or in respect of liabilities of that Division or in relation to those Employers or Members as the case may be.

### 3.5 Divisions

The Fund is divided into the following divisions:

- (1) Division 1 – Media Super – Employer Plan
- (2) Division 2 – Media Super – Employer Plan
- (3) Division 3 – Media Super – Personal Plan
- (4) Division 4 – Media Super – Pension Plan<sup>3132</sup>

### 3.6 Rules

The Trustee may make Rules governing each Division or in respect of part of a Division or particular Employers or Members of a Division and those Rules may be amended or varied in the same manner as this Deed may be amended or varied.

The provisions of Section 1 shall prevail over the Rules in the respective Divisions unless the Rules specify otherwise.

### 3.7 Application of Assets

The assets comprised in each Division shall only be applied for the purpose of that particular Division and shall not be available to meet any liabilities in respect of the other Divisions of the Fund.

### 3.8 Constitution of New Division

The Trustee may establish other Divisions of the Fund by executing a document (**Memorandum of Commencement**) constituting the new Division of the Fund containing the following particulars:

- (1) the name of the Division;

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<sup>31</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>32</sup> This clause was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

- (2) the Rules for that Division;
- (3) the pool of assets for which benefits may be provided;
- (4) any other matters the Trustee determines, and

that Memorandum of Commencement shall take effect upon the date stated in the Memorandum of Commencement.

### 3.9 **Badged Divisions**

- (1) The Trustee may enter into arrangements with third parties (**Sponsors**) for the offer by the Sponsor of participation in a Division (**Badged Division**).
- (2) The Disclosure Document in respect of a Badged Division may, with the approval of the Trustee, carry the name of the Sponsor or name chosen by the Sponsor and approved by the Trustee for the Badged Division other than the name given to the relevant Division by this Deed.
- (3) The provisions of this Deed apply to a Badged Division in the same manner as they apply to any other Division established under this Deed, unless the Rules relating to that Division expressly provide otherwise

## 4. **General Provisions**

### 4.1 **Employer's powers not prejudiced**

Nothing in this Deed shall affect the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit under the Fund shall not be grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

### 4.2 **Exercise of Trustee's rights**

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee by resolution of its Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf PROVIDED THAT any requirements of the Relevant Law are satisfied.

#### **4.3 Rights of Members**

The provisions of this Deed shall not in any way affect the right of a Member or the personal representative of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

#### **4.4 Inquiries, Complaints and Disputes**

- (1) If required by the Relevant Law, the Trustee shall ensure that there are in force arrangements to deal with inquiries or complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Relevant Law.
- (2) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a Court or the Tribunal, the Trustee shall ensure that it implements any decision of a Court or Tribunal as required by that Court or Tribunal.

#### **4.5 Benefits Secured**

The rights of the Members and their Dependants to receive Benefits payable under this Deed shall be fully secured within the meaning of the Relevant Law.

#### **4.6 Members Bound by Deed**

The terms and conditions of this Deed are binding on the Trustee and Member and all persons claiming through them respectively as if each Member had severally been a party to this Deed.

#### **4.7 Service by the Trustee**

- (1) Any notice or other document to be served by the Trustee upon any Participating Employer or upon any Member shall be deemed duly served if delivered personally or sent by prepaid post addressed to the address last known to the Trustee.
- (2) A notice sent by post shall be deemed to have been served on the date when in the ordinary course of post it would normally have been delivered at such address.
- (3) Where at least one (1) notice has been returned and unclaimed from the last known address of a Member and the Trustee is satisfied on reasonable grounds that the address is incorrect or no address for the Member can be obtained and (in either case) the Trustee has taken reasonable steps to locate the Member but has

been unable to do so then the Trustee shall not be required to serve the notice unless and until the Trustee later becomes aware of the address or location of the Member.

#### **4.8 Service on the Trustee**

Any notice or other document to be served on or required to be given to the Trustee shall be deemed to be duly served or received if delivered or sent by prepaid letter post addressed to the Trustee at its registered office or addressed to or care of the Administrator or sent by facsimile to such address.

#### **4.9 Relevant Law to Prevail**

Notwithstanding any of the provisions of this Clause, the Trustee may apply and administer the Deed and Rules in a manner and to the extent that they comply with the requirements of the Relevant Law.

### **5. Proper Law**

This Deed shall be governed and construed and shall take effect in accordance with the laws of New South Wales. The Trustee, Members, Beneficiaries and Employers shall accept the jurisdiction of the Courts of that State or Territory. The provisions of section 35B of the *Trustee Act 1936* of South Australia shall not apply to this Deed or to the Fund.<sup>33</sup>

## **Part 3**

### **6. Employers and Members**

#### **6.1 Employer Application for Membership**

An Employer who is eligible under the Rules of a Division to participate in that Division may apply for participation in that Division by completing and signing an application, including benefit specification (if any) in the form presented by the Trustee and attached to a Disclosure Document and forwarding it to the Trustee. Without in any way limiting the generality of the foregoing, but subject to the Relevant Law, the Trustee may accept the payment of Employer or Member Contributions into the Fund by an applicant's Employer without that Employer becoming a Participating Employer under the Fund.

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<sup>33</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

## **6.2 Acceptance of Application by Employer**

On acceptance by the Trustee of an application by an Employer, the Employer shall execute such agreements or acknowledgements as the Trustee may require in such form as the Trustee and the Employer agree and upon the date agreed by the Trustee and Employer or, if there is no such date, on acceptance of the duly executed application by the Trustee, the Employer shall become a Participating Employer and this Deed together with that application (as amended in accordance with this Deed) shall become binding on the Employer and that Employer's employees.

## **6.3 Associated Employers**

In its application a Participating Employer may join Associated Employers as persons who may make contributions in respect of the Employer's members and those Associated Employers by signing the application shall become bound to make Contributions in the manner set forth in the application in the same way as a Participating Employer is so bound and may cease Contributions in the same manner as a Participating Employer may cease Contributions under the Deed.

## **6.4 Application for Membership**

- (1) A Participating Employer shall nominate to the Trustee those of its Employees to become Members of the Fund. An Eligible Person in respect of whom there is no Participating Employer may apply for Membership of the Fund.
- (2) A Participating Employer may also upon application for admission to the Fund nominate Former Employees of that Participating Employer to become Members of the Fund for the purpose of transferring in to the Fund any amount held in respect of such a Former Employee in another Approved Benefit Arrangement.
- (3) The Trustee may at its sole discretion determine to admit an applicant who is a Spouse of a person, Eligible Person or a Member to Membership of the Fund. An applicant who is admitted to the Fund pursuant to this Clause shall be required to complete an application for Membership in accordance with Clause 6.4(4).
- (4) A person who is eligible under the Rules of a Division to participate in that Division may apply for participation in that Division by;
  - (a) completing and signing an application, including the selected benefit specification (if any), in the form prescribed by the Trustee from time to time and attached to a Disclosure Document;

- (b) lodging the application at the registered office of the Trustee or at any other places at which the Trustee accepts applications.

## 6.5 Disclosure Document

The Trustee may offer a beneficial interest in the Fund or a Division only by way of a Disclosure Document which contains such information, documents, statements and reports in relation to the Fund or to the Division in which beneficial interests are offered as the Relevant Law requires to be given to prospective participants in the Division.

## 6.6 Admission to Membership

- (1) Upon receipt of an application for Membership, the Trustee may determine to admit the Employee or Eligible Person to Membership of the Fund.
- (2) The Member shall be deemed to have joined the Fund on a date determined by the Trustee or, where the Trustee makes no such determination, on the date on which the completed application for Membership is received or is deemed to have been received PROVIDED THAT the Participating Employer, with the consent of the Trustee, or where there is no Participating Employer in relation to the Member, the Trustee, may grant such additional period of Membership as the Participating Employer or the Trustee may determine.
- (3) Subject to any other conditions which may be applied under the provisions of this Deed, the Trustee may impose such conditions on an applicant's admission and the rights and duties of the Member as it shall determine and may limit and impose conditions upon Benefits as it sees fit and the Trustee may remove or vary all or any of the aforesaid conditions at any time.
- (4) Upon admission to Membership of the Fund, the Member shall be bound by this Deed in all respects as if the Member were an original party to the Deed.
- (5) Unless a written application by the Member is required by the Relevant Law, the Trustee may accept a nomination pursuant to an eligible application by a Participating Employer of an Employee to be a Member as sufficient for that Employee to become a Member and to accept from the Participating Employer Contributions pursuant to an Industrial Award or agreement or to satisfy the obligations of the Employer under the Guarantee Act in respect of that Member.

## **6.7 Members and Beneficiaries to Provide Information**

- (1) Each applicant for Membership and any Beneficiary shall when requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund, and shall submit to medical examinations as required by the Trustee by a registered medical practitioner who is acceptable to the Trustee.
- (2) Where a Member or Beneficiary fails to comply with the provisions of this Clause, the Trustee may suspend the collection of any Contributions in respect of that Member or withhold any Benefits in respect of that Member or Beneficiary or impose such other conditions on the continued Membership of that Member or on the Beneficiary as the Trustee shall deem appropriate.

## **6.8 Incorrect or Misleading Information**

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

## **6.9 Information re Age**

A Member shall inform the Trustee as soon as practicable after the Member ceases Part-Time or Full-Time Gainful Employment after Normal Retirement Age or ceases to be Gainfully Employed.<sup>34</sup>

## **6.10 Cessation of Membership**

A person shall cease to be a Member of the Fund upon the earliest to occur of the following:

- (1) the date upon which payment of all the Member's Benefits is made to the Member or to an Approved Benefit Arrangement on behalf of the Member;
- (2) the death of the Member;
- (3) the Total and Permanent Disablement of the Member;
- (4) the date on which Unclaimed Benefits in respect of a Member are paid to the Regulator;

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<sup>34</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (5) the date on which Benefits are transferred to an Eligible Rollover Fund;
- (6) the date when Benefits payable to or on behalf of a Member cease to be payable; or
- (7) such date as the Trustee shall reasonably determine.

#### **6.11 Information on Employers and Members**

The Trustee shall keep the following information on its administration system about all Employers and Members as required by the Relevant Law:

- (1) the name and address of each Employer and Member;
- (2) the date upon which the name of each Employer and Member became an Employer or Member as the case may be;
- (3) the amount of the Contributions made by each Member or on behalf of each Member;
- (4) the amount of the Contributions made by an Employer in respect of each Member;
- (5) the date upon which any Employer ceases to be an Employer, the date upon which any Member ceases to be a Member; and
- (6) such other matters and things as the Trustee considers desirable.

#### **6.12 Inspection of Information**

Any Employer or Member shall be entitled to inspect any entry in respect of that Employer or Member in the administration system at any time (if still available) during business hours of the Trustee, at the registered office of the Trustee. The Trustee may determine to charge a reasonable fee for that information.

#### **6.13 Termination of Participating Employer's Contributions**

##### **(1) Circumstances of Cessation**

A Participating Employer shall cease to be a Participating Employer for the purposes of the Fund and Contributions to the Fund shall terminate from that Participating Employer on the date that:

- (a) a deed of appointment placing the Participating Employer in receivership or under official management is executed by the appointor of that receiver or manager;

- (b) a resolution of its shareholders or an order of a Court places the Participating Employer in liquidation; or
- (c) the Participating Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

(2) **Exercise of Powers of Participating Employer**

If the Participating Employer ceases to be a Participating Employer under Clause 6.13(1), the powers and discretions vested in the Participating Employer under this Deed shall immediately terminate and shall then only be exercisable by such of the Participating Employers as the Trustee shall from time to time determine or, in the absence of any such determination, by the Trustee.

(3) **Employees not to be admitted**

No Employee of a Participating Employer shall be admitted as a Member where the Participating Employer's Contributions in respect of its Employees have been terminated under Clause 6.13(1).

(4) **Benefits Held for Members**

In the event that Contributions by a Participating Employer cease in the circumstances described in Clause 6.13(1) then:

- (a) all money not already allocated shall be allocated by the Trustee to the Members Accounts in such shares and proportions as the Trustee shall direct; and
- (b) proceeds or other sums held, received or allocated by the Trustee in respect of a particular Member shall be held in trust by the Trustee and may, subject to the provisions of this Deed and the Relevant Law, be transferred to another Division of the Fund or to the trustee of another Approved Benefit Arrangement nominated by the Member.

(5) **Partial Termination**

If the Participating Employer terminates its Contributions to the Fund in respect of some or all of the Members for whom it has been contributing, the Trustee shall unless another Participating Employer agrees to continue the Contributions in respect of those Members within the provisions of this Deed, deal with all moneys relating to those Members as specified in Clause 6.13(4).

#### 6.14 **Transfer of Participating Employer's Business**

If a Participating Employer (**Former Employer**) is amalgamated with or disposes of its undertaking to another Participating Employer (**New Employer**), Contributions shall be deemed not to have terminated their Service and the Members who are Employees of the Former Employer shall become Employees with the New Employer and the New Employer may make future Contributions in respect of those Members.

#### 6.15 **Reconstruction or Amalgamation of a Participating Employer**

If a Participating Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another employer or disposes of all or the majority of its undertaking, the Trustee may deal with the interests of Members in all or any of the following ways:

(1) **Deed of Adoption**

Enter into a deed of adoption with its successor as a Participating Employer with the object of carrying on a Complying Superannuation Fund either under this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or

(2) **Transfer Assets**

Retain the assets and transfer the Members to another Division of the Fund or transfer some or all of the assets of the Fund representing the assets applicable to Members who were Employees of the former Participating Employer to a Complying Superannuation Fund conducted by a new Employer in accordance with and subject to the provisions of Clause 26 in respect of some or all Members or former Members; or

(3) **Continue Fund**

Continue to operate the Fund for the benefit of any Members still employed by the former Participating Employer.

### 7. **Membership Notification Requirements**

#### 7.1 **Notice to New Members**

As soon as practicable before or after the admission of a person as a Member of the Fund, the Trustee shall arrange for such Member to be given a written statement or Disclosure Document containing:

- (1) confirmation of acceptance of Membership and detailing the date of admission;
- (2) a summary of the Benefits to which the Member will be entitled and the method of determining those benefits and any conditions relating to those Benefits; and
- (3) all other information and details relating to the Fund as is required to be provided by the Relevant Law.

## **7.2 Disclosure and Reporting Requirements**

The Trustee shall arrange for Members, former Members and Beneficiaries to be provided with information in writing, or copies of accounts, records or documents of the Fund as required by the Relevant Law on an annual basis and on other occasions and in such manner as shall be required by the Relevant Law.

## **7.3 Notice to Former Member**

As soon as practicable after a person ceases to be a Member of the Fund, the Trustee shall arrange for such former Member or the Legal Personal Representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by the Relevant Law.

## **7.4 Disclosure Limitation**

No Member or Dependant of a Member shall be entitled to obtain information in respect of any details of the operation of the Fund or on any matter which may relate to the conduct of the Fund which in the opinion of the Trustee would be inappropriate to disclose other than as is provided for by this Clause.

## **7.5 Inspection of Trust Deed and other Documents**

A copy of this Deed and any other documents as required by the Relevant Law shall be made available for inspection by any Member or Beneficiary on their request and unless otherwise required by the Relevant Law, it shall be sufficient for the purposes of this Clause to make a copy of this Deed or such documents available to the Member or Beneficiary for inspection at the office of the Trustee during hours when that office is open. If a copy of this Deed is requested, then the Trustee may charge a fee for the provision of the copy.

## 7.6 **Nominated Beneficiary**

Subject to Clauses 30 and 40, a Member may upon admission and from time to time thereafter in a manner approved by the Trustee notify the Trustee of:

- (1) the names and addresses of any person or persons to whom the Member wishes any Benefit payable upon the Member's death to be paid;
- (2) the proportions and manner in which the Member wishes those Benefits to be paid;
- (3) the nomination:
  - (a) may be varied or replaced from time to time in a manner approved by the Trustee; and
  - (b) it is not binding upon the Trustee but the Trustee may consider the nomination when exercising any of its discretions in respect of the Member.

## 7.7 **Sub-Plans**

- (1) The Trustee may in respect of any Division determine to make a sub-plan for the Division (**Sub-Plan**).
- (2) In determining whether to make a Sub-Plan, the Trustee must have regard to all relevant matters, including whether there is a common factor in a segment of the Division (for example where there is a group of Members of the Division who have the same Employer).

## 7.8 **Commission and Brokerage**

- (1) The Trustee may make a payment of commission or brokerage to a person in consideration of the person applying or agreeing to apply for participation in a Division or procuring or agreeing to procure applications or participation if an amount of the proposed payment or the proposed rate of payment is disclosed in a Disclosure Document.
- (2) The Trustee must not make a payment of commission or brokerage to a person in respect of the acceptance of any person for participation in a Division unless the person:
  - (a) is the holder of an appropriate AFS Licence granted under the *Corporations Act 2001*; or

- (b) is an Authorised Representative; or
- (c) is:
  - (i) an accountant or a solicitor, a firm of accountants or solicitors, a company providing accountancy or legal services or a director or employer of a company of that kind, whose principal business is not the giving of financial product advice about financial products; or
  - (ii) is a licensed insurance broker within the meaning of the *Corporations Act 2001* or a life insurance company.

## **Part 4**

### **8. The Fund**

#### **8.1 Fund Vested in Trustee**

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

#### **8.2 Fund Assets**

The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall include:

- (1) the amount, if any, standing or transferred to the credit of the Fund (including any amounts standing to the credit of any accounts established pursuant to Clause 9 of this Deed) at or after the date from which this Deed comes into effect;
- (2) Contributions (if any) that the Members make to the Fund at any time;
- (3) Contributions as an Employer makes to the Fund at any time;
- (4) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (5) profits and other benefits (including capital) arising from any investment and the accumulation of those profits;
- (6) the proceeds (including bonuses) of any Policy held by the Fund;

- (7) moneys, investments and other property transferred to the Fund as a Roll Over Payment;
- (8) such monies and assets paid or transferred to the Trustee pursuant to Clause 27 of this Deed;
- (9) such Shortfall Components as are received by the Fund;
- (10) any Financial Assistance received by the Fund
- (11) provisions for Taxation and other expenses; and
- (12) such other Contributions permitted under this Deed and the Relevant Law.

## **9. Accounts**

### **9.1 Income Account**

- (1) The Trustee shall establish an Income Account in respect of each Division to which shall be credited the following:
  - (a) all income and profits of the Division each year;
  - (b) credits arising out of adjustments pursuant to Clause 9;
  - (c) any amount transferred from the Investment Fluctuation Reserve pursuant to Clause 9.2;
  - (d) the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Account;
  - (e) any Financial Assistance received by the Fund and not credited to an Account;
  - (f) the benefit of any tax offset or rebates obtained by the Fund including in relation to tax previously paid by the Fund on No-TFN Contributions Income in respect to a Member; and<sup>35</sup>
  - (g) and profits of the Division shall include any surplus arising from a valuation undertaken at any time during the year in accordance with Clause 9.3.

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<sup>35</sup> This clause was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the existing clause was re-numbered accordingly

- (2) The Income Account shall be debited with the following:
- (a) any loss sustained on the disposal of any investments of the Fund;
  - (b) any costs or charges incurred pursuant to Clause 22 which are not debited to an Account;
  - (c) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Account;
  - (d) any deficiency arising from a valuation undertaken in accordance with Clause 9.3;
  - (e) any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Fund which are not debited to an Account as the Trustee determines to be equitable;
  - (f) any amount of Levy or other similar charge payable by the Fund and not debited to an Account;
  - (g) any amount paid in satisfaction of a Release Authority given to the Trustee for payment of an excess contributions tax assessment<sup>36</sup>
  - (h) any income transferred to the Investment Fluctuation Reserve; and
  - (i) any other amount determined by the Trustee.

## 9.2 Investment Fluctuation Reserve

- (1) The Trustee shall have power at any time to establish an Investment Fluctuation Reserve in respect of the Fund or each Division.
- (2) Whilst any moneys are held in the Investment Fluctuation Reserve, they shall not form part of any Account or Pension Account and any income earned by the Fund on the moneys held in the Investment Fluctuation Reserve shall be credited to the Investment Fluctuation Reserve.

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<sup>36</sup> This clause was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the existing clause was re-numbered accordingly

- (3) The Investment Fluctuation Reserve shall at the discretion of the Trustee be used for the following purposes:
- (a) to generally give effect to stabilise the investment earnings or losses of the Fund and the total amount allocated to a Fund Investment Pool for periods determined by the Trustee;
  - (b) to provide for such contingencies as the Trustee shall determine;
  - (c) to meet any Taxation payments payable by the Fund;
  - (d) to pay any expenses, charges, commission or brokerage payable by the Fund;
  - (e) to or for the benefit of a Member, Pensioner, Beneficiary or former Member including augmentation of the Account or Pension Account on a basis that does not breach the Relevant Law; or
  - (f) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.
- (4) The Trustee must not allocate amounts under Clause 9.2(3) that would take the Investment Fluctuation Reserve into debit.

#### **9.2A Administration Reserve Account**

- (1) The Trustee shall establish an Administration reserve Account for the Fund that must only be used for the following purposes:
- (a) to hold the minimum capital amount specified by the Regulator in order to comply with the applicable RSE Licence conditions; and
  - (b) to ensure the solvency of the Trustee and support its business operations and can only be used as and when required or directed by the Regulator.
- (2) Whilst any moneys are held in the Administration Reserve Account they shall not form part of any Account or Pension Account and any income earned by the Fund on those moneys shall be credited to the Income Account or Member or Pension Accounts as the Trustee determines.
- (3) If the Trustee uses or is directed to use any moneys in the Administration Reserve Account by the Regulator it must

immediately replenish the account to the amount required by the Regulator by taking moneys from either the Income Account, Investment Fluctuation Reserve or Member or Pension Accounts in the Divisions.<sup>37</sup>

**9.3 <sup>38</sup>Valuation of the Fund**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Relevant Law shall require the Trustee shall make a valuation of all assets of each Division (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Division and of the Fund.

**10. Valuation of Fund Investment Pools**

10.1 The Trustee must cause each Fund Investment Pool to be valued at times which the Trustee considers appropriate.

10.2 The Trustee must determine, as it considers appropriate, for each Fund Investment Pool:

- (1) the period during which an Application Price is to apply;
- (2) the period during which a Withdrawal Price is to apply;
- (3) the time of any valuation under this Clause which is to apply to each of the periods in Clauses 10.2(1) and 10.2(2).

**11. Unit Valuation**

**11.1 Division into Units**

The beneficial interest in the assets of each Fund Investment Pool is divided into notional Units. No Unit confers a legal or equitable interest in any of the assets of the underlying Fund Investment Pool of the Fund.

**11.2 Units of Equal Value**

- (1) All Units in a Fund Investment Pool have an equal value.

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<sup>37</sup> This clause titled "Administration Reserve Account" was inserted by Deed of Variation dated 2 September 2005, effective 2 September 2005

<sup>38</sup> The original clause of 9.3 titled "Forfeiture Account" was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the existing clauses were re-numbered accordingly

- (2) The amounts in Clauses 11.3 and 11.4 may be rounded as the Trustee considers appropriate.

### 11.3 Application Price

The Application Price of each Unit in a Fund Investment Pool for the period determined under Clause 10.2(1) is:

$$\frac{VIP + ITC}{U}$$

where:

VIP the value of the Fund Investment Pool under Clause 10.1 and applicable for the period;

ITC the share of the Investment Transaction Costs which the Trustee considers appropriate to apportion to the Fund Investment Pool;

U the number of Units on issue in the Fund Investment Pool.

### 11.4 Withdrawal Price

The Withdrawal Price of Units in an investment portfolio for a period determined under Clause 10.2(2) is one of the following as the Trustee determines to be appropriate:

(1)

$$\frac{VIP - WTC}{U}$$

where:

VIP the value of the Fund Investment Pool determined under Clause 10.1 and applicable for the period;

WTC the share of Withdrawal Transaction Costs which the Trustee considers appropriate to apportion to the Investment Portfolio;

U the number of Units in issue in the Investment Portfolio;

(2) the Application Price for the period; or

(3) an amount between the amounts determined under Clauses 11.4(1) and 11.4(2).

### **11.5 Determination of Unit Prices**

The Application Price and Withdrawal Price of Units in a Fund Investment Pool may be determined by the Trustee at any time (including more than once a day) and must be determined by the Trustee at least once each month.

### **11.6 Suspension of Issue**

The Trustee may suspend the issue and redemption of Units in respect of the whole or any part of a Fund Investment Pool as the Trustee considers appropriate. The Trustee may determine that Clause 11.5 does not apply if it suspends the issue and redemption of Units under this Clause 11.6.

## **12. Issue of Units**

12.1 On accepting a Contribution or other amount in respect of a Member, the Trustee must:

(1) allocate Units to the Member in the Fund Investment Pool notified to the Trustee:

(a) by the Member; or

(b) in the case of an employer-sponsored Member, by the Participating Employer or the Member;

and permitted by the Trustee; or

(2) to the extent that no Fund Investment Pool is notified by the Member or Employer, allocate Units to the Member in the Fund Investment Pool as the Trustee considers appropriate.

12.2 The number of Units in a Fund Investment Pool to be allocated to a Member is determined by dividing:

(1) the amount applied to the Fund Investment Pool less any Taxation, Costs, charges, expenses or fees which the Trustee considers appropriate to deduct in respect of the amount; by

(2) the Application Price of Units in that Fund Investment Pool on the Application Date.

## **13. Redemption of Units**

13.1 The Trustee may redeem any Units (including fractions of Units) allocated to a Member to:

- (1) pay any Benefit to the Member;
- (2) transfer or rollover Benefits from the Fund in accordance with Clause 26;
- (3) meet any Taxation, costs, charges, expenses or fees or provision for any of them that the Trustee considers appropriate in relation to the Member.
- (4) switch an amount to another Fund Investment Pool.

13.2 The number of Units to be redeemed is determined by dividing:

- (1) the amount of the Benefit or payment under Clause 13.1 less any Taxation, costs, charges, expenses or fees or provision for any of them which the Trustee considers appropriate to apply in respect of the amount by
- (2) the Withdrawal Price of the Units on the Application Date.

13.3 The Trustee may round the number of Units to a fraction of a Unit if the Trustee considers appropriate.

## **14. Switching**

### **14.1 Switching Request**

A switching request by a Member may be made to the Trustee in the prescribed form. The Trustee is not required to comply with the switching request if the request is not in the prescribed form or where it is unfairly prejudicial to the interests of other Members in the relevant Fund Investment Pool or the Plan.

### **14.2 Minimum Switch**

The Trustee may:

- (1) set a minimum switching amount for each Fund Investment Pool;
- (2) vary any minimum switching amount at any time;
- (3) refuse to process any switching request for an amount less than the minimum switching amount;
- (4) if the amount remaining in the Fund Investment Pool is less than a minimum prescribed by the Trustee in the Disclosure Document then the amount can be transferred by the Trustee into any remaining Fund Investment Pools held by the Member; or

- (5) refund that amount less any applicable Tax to the Member pursuant to the Relevant Law.

## **15. Fees**

### **15.1 Fees and Expenses**

Pursuant to Clause 22 of this Deed the Trustee is entitled to charge Member Accounts the following fees and expenses as it shall determine from time to time:

- (1) member fee;
- (2) contribution fee;
- (3) administration fee;
- (4) ongoing management fee;
- (5) additional adviser service fee;
- (6) insurance premiums and applicable brokerage;
- (7) switching fee;
- (8) Benefit payment fee;
- (9) expense recovery fee in relation to the items listed in Clause 22.3 of this Deed; and
- (10) any other fee as determined by the Trustee.

### **15.2 Indexation**

The Trustee is entitled to index annually the fees listed in Clause 15 to the Average Weekly Ordinary Time Earnings or to such other index as it determines.

### **15.3 Rebate of Premium**

The Trustee shall be entitled to be paid any amounts representing a rebate or reimbursement of premium from effecting a Policy.

### **15.4 Transaction Costs**

The Trustee shall be entitled to retain the Investment Transaction Costs and Withdrawal Transaction Costs in relation to the Application Price or Withdrawal Price of Units calculated under Clauses 11.3 and 11.4.

### **15.5 Differential Fees**

Notwithstanding any provisions in the Deed to the contrary, the Trustee may (but is not obliged to) charge different levels of fees to prescribed classes of Members or Employers as it determines in its discretion.

### **15.6 Selection of Units on Withdrawal**

The Trustee, unless agreed with the Employer or Member, may select what class and type of Units it withdraws from any investment option selected by the Employer or Member in order to meet any liability of the Division.

### **15.7 Rebate of Fees**

The Trustee may in its discretion rebate any fees or income received by it to Members in such proportions pursuant to the Relevant Law as it sees fit.

## **16. Fund Records, Disclosure And Investigation**

### **16.1 Receipt and payment of moneys**

All moneys of the Divisions of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Trustee or Custodian kept with a bank or non-bank financial institution as determined from time to time by the Trustee and the Custodian or to the credit of an Insurer for the payment of premiums or into the trust account of a Solicitor, Accountant or Investment Manager appointed by the Custodian in accordance with this Deed.

### **16.2 Issue of receipts**

A receipt given on behalf of the Fund by the Trustee, by the secretary (if any) of the Fund, by the Custodian or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be a sufficient discharge to the person by whom the moneys are paid.

### **16.3 Records and accounts to be kept**

The Trustee shall arrange for:

- (1) the keeping of accounts and records of all moneys received into and disbursed from each Division of the Fund and of all dealings in connection with such moneys;

- (2) the collection, and prompt payment into an authorised account of each Division of the Fund or the otherwise appropriate dealing with all moneys due to each Division of the Fund;
- (3) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law; and
- (4) the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such accounts and statements in respect of each Fund Year as are required by the Relevant Law.
- (5) the preparation and lodgement of an annual return to the Regulator and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law.

#### **16.4 Audit**

The Trustee shall:

- (1) make suitable arrangements for the auditing of the accounts, books and relevant records of the Fund by an approved Auditor annually or at such other times as required by the Relevant Law; and
- (2) obtain from the approved Auditor a certificate at such time and in such form as required by the Relevant Law.

#### **16.5 Information for Trustee**

- (1) When requested by the Trustee, an Employer shall give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer pursuant to this Deed and shall not be required to verify that information.
- (2) The Employer shall advise the Trustee when:
  - (a) a Member has died or it is claimed that a Member has become Totally and Permanently Disabled or otherwise disabled or has retired from Gainful Employment on or after attaining the Normal Retirement Age; or

- (b) a Member has otherwise ceased to be an Employee before reaching the Normal Retirement Age or after Normal Retirement Age without retiring permanently from Gainful Employment.

#### **16.6 Disclosure and Reporting Requirements**

The Trustee shall arrange to provide to:

- (1) Employers;
- (2) the Regulator;
- (3) the Actuary;
- (4) the Auditor, and
- (5) any other persons specified in the Relevant Law,

such information or documentation, at such time and in such manner as shall be required by the Relevant Law.

#### **16.7 Production of Books or Access to Premises**

The Trustee shall make suitable arrangements for the production of any books, records or other information in relation to the Fund and the access to premises where any such books or information are kept for the purpose of inspection and the taking of copies in accordance with the Relevant Law.

#### **16.8 Directions of Regulator**

The Trustee must comply with any direction or requirement of the Regulator under the Relevant Law in relation to the Fund including but not limited to the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

#### **16.9 Information and Documents for Tribunal**

The Trustee shall arrange to provide to the Tribunal any information or documents relevant to a complaint before the Tribunal in such manner and within such time as required by the *Superannuation (Resolution of Complaints) Act 1993* and may make submissions to or attend a conference of the Tribunal as the Trustee sees fit.

#### **16.10 Lost Members**

Where a Member is a Lost Member, the Trustee shall give such information in respect of the Lost Member to the Regulator at such time and in such manner as required by the Relevant Law.

#### **16.11 Reduced Information Requirements for Small Balance Members**

Where a Member is a Small Account Balance Member, the Trustee may if it so determines supply to that Member only such information as is required to be supplied under the Relevant Law.

#### **16.12 Confidentiality**

The Trustee Directors and former Directors, a sub-committee and its members and former members or any other party administering or dealing with the Fund shall regard as strictly confidential all information disclosed to or gained by it in the course of administering or dealing with the Fund or otherwise in connection with this Deed or any matter relating or incidental to this Deed.

#### **16.13 Costs of Supplying Information**

A charge for the supply of information of an amount not exceeding the reasonable cost of giving the information may be required by the Trustee to be paid by the persons in the circumstances permitted under the Relevant Law.

### **Part 5**

#### **17. Fund Trustee Appointment, Vacancy And Removal**

##### **17.1 Trustee must be an Approved Trustee**

The Trustee of the Fund shall at all times be a Constitutional Corporation which is eligible to act as an Approved Trustee or public offer entity trustee and hold an RSE Licence and an AFS Licence unless the Relevant Law otherwise provides.

##### **17.2 Member and Employer Representation**

Only if required by the Relevant Law, the Trustee shall put in place arrangements to facilitate equal representation of Members and Employers and shall if so required by the Relevant Law, set up one or more Policy Committees.

### **17.3 Policy Committees**

In the event that the Trustee is required to establish one or more Policy Committees for the Fund under the Relevant Law, it shall establish and maintain the operation of such Policy Committees in order to fulfil the functions required of Policy Committees as set out in the Relevant Law and it shall administer, dissolve, reform or replace such Policy Committees as necessary in accordance with the Relevant Law.

### **17.4 Change of Trustee**

A Trustee shall immediately cease to act as Trustee of the Fund:

- (1) if it is placed in receivership or in liquidation;
- (2) if it is disqualified from holding office as a Trustee by operation of the Relevant Law or if the Trustee is removed or suspended from office under the Relevant Law;
- (3) if it ceases to qualify as an Approved Trustee or public offer entity trustee with an RSE Licence;
- (4) if it is removed by the members in accordance with the Relevant Law;
- (5) if it is removed by a Court; or
- (6) if it resigns as a Trustee of the Fund by giving written notice to the Regulator.

### **17.5 Appointment of Trustee**

A Trustee of the Fund shall be appointed in writing in accordance with the provisions of this Deed by the retiring Trustee PROVIDED THAT in the event that the retiring Trustee is unable or unwilling to do so, then representatives from the Union and the Association or the Regulator shall determine who shall act as Trustee in accordance with the provisions of this Deed and the Relevant Law and shall take such steps as are necessary to appoint the person to the office of Trustee.

### **17.6 Retirement of Trustee**

If the Trustee has retired from office the Trustee shall thereupon or at any time thereafter, do, sign and execute all such things, papers, writings, documents, deeds and instruments as maybe necessary to give proper effect to such retirement from office and the transfer or assignment to or otherwise the vesting of the assets comprised in the Fund in the new Trustee.

### **17.7 Significant Adverse Event**

The Trustee will on becoming aware of the occurrence of an event having a significant adverse affect on the financial position of a Division give within the period prescribed by the Relevant Law written notice of the event to the Regulator setting out particulars of the event.

### **17.8 Reasonable and Proper Costs**

The Trustee will ensure that the costs, charges and expenses of a Division in respect of which a payment is made are reasonably and properly incurred.

### **17.9 Antecedent Breach by Trustee**

Nothing contained in this Deed shall relieve a Constitutional Corporation which ceases to be Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

## **18. Trustee's Investment Powers**

### **18.1 Investment Options**

The Trustee shall formulate and give effect to one or more investment options that have regard to the whole of the circumstances of the Fund. The options must be reviewed from time to time and shall be formulated and effected in accordance with the Relevant Law.

### **18.2 Authorised Investments**

The moneys forming part of the Fund that are not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment option of the Fund as determined under Clause 18.1 in any of the following investments:

- (1) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (2) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (3) on deposit with any bank, building society, credit co-operative, trustee company or other registered or licensed financial institution

in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;

- (4) on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (5) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (6) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (7) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (8) the acquisition of any derivative within the meaning of that term in the *Corporations Act 2001* and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund;
- (9) without limiting the generality of the above, the purchase or acquisition of real estate, shares or units in any company situated anywhere in the world, unit trust or interest in any joint venture established for the purpose of licensing computer software.
- (10) any other investments or joint ventures which the Trustee considers appropriate and which satisfy the Relevant Law,

and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee must not make a loan to or give any financial assistance to a Member or a relative of a Member of the Fund and PROVIDED FURTHER THAT the Trustee shall ensure that all investments shall be in accordance with the Relevant Law.

### **18.3 Power to Sell, Vary and otherwise deal with Investments**

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

#### **18.4 Interest of Trustee in Investment**

- (1) Subject to Clause 18.4(2), the Trustee and any Director shall have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (2) The Trustee and any Director shall disclose details of any interest in an investment to which Clause 18.4(1) applies in the manner prescribed under the *Corporations Act 2001* and the Relevant Law.

#### **18.5 Provision of Investment Choice**

- (1) The Trustee in its absolute discretion determine to provide investment choice either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or for each of the Divisions
- (2) Where the Trustee determines to provide investment choice, it shall establish an investment option for each of the investment choices available to Members and Beneficiaries under the Fund and where appropriate shall allocate or designate particular assets of the Fund to be held within that option. The Trustee must set out such information about the relevant investment option in a Disclosure Document as required by the Relevant Law. The Disclosure Document must be kept up to date and reflect only the current investment option offered to Members or Beneficiaries.
- (3) The Trustee shall continually monitor each of the investment options established under Clause 18.5(2) and the assets held within each investment option in order to ensure that each of those investment options is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those investment options is available.
- (4) The Trustee may establish a sub-account within the Income Account established under Clause 9.1 in respect of each investment option and shall debit and credit to each sub-account any amounts including costs, charges and fees and any Taxation attributable to the relevant investment options as the Trustee shall determine.
- (5) Upon admission of a person to Membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with Clause 18.5(1), select one or, where the Trustee has determined to permit Members to select multiple investment options, more than one of the investment

options formulated by the Trustee under Clause 18.5(2) and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment option or options selected by that person under this Clause PROVIDED THAT any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law.

- (6) A Member or Beneficiary who wishes to select one or more investment options pursuant to Clause 18.5(5) shall complete an application or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment option or options selected by the Member or Beneficiary. The Trustee shall not be bound to act on the application or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.
- (7) The Trustee shall advise Members and Beneficiaries of the investment option or options (default option) which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, fail to select or otherwise are unable to select an investment option.
- (8) Notwithstanding any of the foregoing the Trustee may adopt an investment option or options specifically tailored to existing Fund investments in respect of which a direction had been given by the Member or Beneficiary or classes of Members or Beneficiaries and accepted by the Trustee.

#### **18.6 Securities Lending Arrangements**

The Trustee may enter into any securities lending agreement or facility with the Custodian for the lending of securities of the Fund held by the Custodian, whether in Australia or overseas to approved borrowers for the purposes of achieving an investment return for the Fund.

### **19. Trustee's Powers of Management**

#### **19.1 Trustee to Manage each Division**

Subject to the provisions of this Deed, the Trustee must manage each Division for the benefit of the Participating Employers and Members with full and complete powers of management.

## 19.2 Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee shall have the following powers:

- (1) to settle, compromise or submit to arbitration any claims, complaints, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (2) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (3) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT the borrowing will not breach the Relevant Law;
- (4) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (5) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (6) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- (7) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration, custody or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (8) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation or amounts paid to satisfy any Release Authority) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund

the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;<sup>39</sup>

- (9) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund PROVIDED THAT an indemnity shall only be provided to the extent it is not limited by or would be inoperative under the Relevant Law;
- (10) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (11) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (12) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 21;
- (13) to maintain reserves in respect of a Division;
- (14) to enter into such agreements or enforce any agreement that benefits the Members of a Division;
- (15) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (16) to seek modifications of or exemptions from the application of the Relevant Law to the Fund PROVIDED THAT the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted; and
- (17) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

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<sup>39</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

### **19.3 Exercise of Trustee Powers**

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Fund.

### **19.4 Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion as to its exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding PROVIDED THAT the Trustee shall not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination PROVIDED FURTHER THAT the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed shall be subject to the Relevant Law.

### **19.5 Establishment of Committees**

- (1) The Trustee may from time to time establish and appoint persons to committees and/or working parties for the purposes of such matters as the Trustee considers fit and on such terms as it thinks fit.
- (2) Any committee or working party established hereunder shall be entitled to give advice on those matters required by the Trustee.
- (3) The Trustee may but shall not be bound to act on the advice of any such committee or working party.

### **19.6 Trustee Delegation**

The Trustee may delegate to any person or committee any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation PROVIDED THAT any such delegation shall only be undertaken in accordance with the Relevant Law.

### **19.7 Trustee Direction**

Except in those circumstances which are acceptable within the Relevant Law, the Trustee shall not be subject to direction by any person in the exercise of any of its powers.

## **19.8 Compliance with Relevant Law**

The Trustee is empowered to, and must, do or cause to be done all acts, matters and things which it considers appropriate or which are necessary to comply with or satisfy the Relevant Law. The Trustee may, but is not required to comply with or consider complying with any standard or provision of the Relevant Law that is not a requirement.

## **19.9 Failure to Comply with Relevant Law**

The Trustee must not do, or omit to do, or cause or permit to be done or omitted, anything which would result in the Fund failing to comply with or satisfy the Relevant Law and the Trustee must do all acts, matters and things which it considers appropriate, necessary or incidental to prevent such a failure.

## **19.10 Anti-Money Laundering Plan**

The Trustee will develop and maintain an anti-money laundering/counter-terrorism financing program in the format required by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or as otherwise required by the Relevant Law and will engage in appropriate Member identification procedures, transaction reporting and suspicious matter reporting as required by the Relevant Law.<sup>40</sup>

## **20. Limitation of Liability**

### **20.1 Liability of Trustees, Directors and Officers**

Neither the Trustee nor any of its Directors or Officers shall be liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except a liability that:

- (1) arises because of that person's failure to act honestly; or
- (2) arises because of that person's intentional or reckless failure to exercise the degree of care and diligence that that person is required to exercise; or
- (3) consists of a monetary penalty under a civil penalty order under the Relevant Law.

### **20.2 Loss, Default, bona fide acts, mistake**

Without limiting the generality of the exemption from liability under Clause 20.1, the Trustee shall not incur any liability for:

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<sup>40</sup> This clause titled "Anti-Money laundering Plan" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007.

- (1) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (2) any act or default of any former Trustee or any Director or Officer of a former Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (3) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee;
- (4) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

### **20.3 Limitation of exemption from liability**

This Clause shall only operate to exempt a person from liability to the extent that the provision of such an exemption is not limited by or would be inoperative under the Relevant Law.

## **21. Indemnity of Trustee**

### **21.1 Indemnity and Lien**

The Trustee and where applicable its Directors (including former Directors) and Officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under this Deed or at law except a liability that:

- (1) arises because of that person's failure to act honestly;
- (2) arises because of that person's intentional or reckless failure to exercise the degree of care and diligence that that person is required to exercise; or
- (3) consists of a monetary penalty under a civil penalty order under the Relevant Law;

and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purpose of this indemnity.

### **21.2 Payments in Good Faith**

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact entitled.

### **21.3 Opinion or Advice**

This indemnity shall extend to the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

### **21.4 Failure to Carry Out Agreement**

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

### **21.5 Agents and Servants of Trustee**

This indemnity shall extend to the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

### **21.6 Limitation of Indemnity**

The indemnity provided under this Clause in respect of the Trustee or any Directors, Officers, agents or servants of the Trustee shall not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

## **22. Remuneration of Trustee**

### **22.1 Costs and Disbursements**

The Trustee shall be entitled to charge each Division professional fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Fund as the Trustee determines. The fees, costs and disbursements will be debited to the Income Account of each Division or directly to the Account or Pension Account of a Member of a Division as determined by the Trustee and which fees, costs and disbursements may reduce the Member's Benefit.

### **22.2 Fees Determined at discretion of Trustee**

The fees charged by the Trustee shall be determined from time to time by the Trustee in accordance with the Relevant Law. Prior notice of any changes which are intended to be made to the fees chargeable shall be provided to the Members and any Employers by the Trustee as required by the Relevant Law.

### 22.3 Reimbursement

The Trustee shall be entitled to be reimbursed from each Division for and in respect of the following expenses:

- (1) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (2) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
- (3) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (4) all professional fees and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administrator, Investment Manager, Custodian, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (5) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any Disclosure Document, any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (6) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (7) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions and the attendance of the Trustee before the Tribunal;
- (8) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, Taxation or other returns or advices;
- (9) any commission or brokerage payable in respect of an application for Membership or agreement to procure applications for Membership of a Division;

- (10) any reasonable fees payable or to be payable to directors of the Trustee by the Trustee;
- (11) any amount required to fund or replenish the Administration Reserve Account;<sup>41</sup>
- (12) any fees or expenses payable in respect of any Policy Committee; and
- (13) any other expenses as determined by the Trustee pursuant to the Relevant Law.

#### **22.4 Member Protection**

Subject to the specific requirements of the Relevant Law, the proportion of the charges payable by or recoverable from the Fund pursuant to Clauses 22.1, 22.2 and 22.3 in respect of a Fund Year which apply to all Members of the Fund shall not, in the case of Small Balance Members, exceed the investment return credited to, or debited against, the Small Balance Member's Benefit.

### **Part 6**

#### **23. Appointment of Actuary, Auditor and Managers**

##### **23.1 Actuary and Auditor**

The Trustee shall if necessary, appoint a person or firm to the following offices on such conditions as it shall determine:

- (1) an Actuary who is a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow; and
- (2) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law.

##### **23.2 Administrator**

The Trustee may appoint in writing on such terms as it thinks fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administrator of the Fund to carry out some or all of the administration of the Fund.

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<sup>41</sup> This clause was inserted by Deed of Variation dated 2 September 2005, effective 2 September 2005 and the existing sub-clauses were re-numbered accordingly

### **23.3 Investment Manager**

- (1) The Trustee shall have power to appoint in writing one or more persons or companies to act as Investment Manager for the Fund for such period and on such terms and conditions as the Trustee shall determine PROVIDED THAT the person or company is qualified to act and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law;
- (2) The Trustee may delegate to each Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee shall determine and may reallocate the assets of the Fund being invested by that Investment Manager.

### **23.4 Custodian**

- (1) The Trustee shall have power to appoint one or more companies to act as a Custodian for the Fund and the Fund's bank account for such period and on such terms and conditions as the Trustee shall determine and may delegate and confer upon such Custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund, or the appointment of Sub-Custodians as the Trustee shall determine provided that the company appointed to act as Custodian shall not be prohibited from so acting at any time under the Relevant Law;
- (2) The Trustee shall not be liable or responsible for any act, omission, error judgment, negligence or breach of trust by any Custodian;
- (3) The Trustee shall have power to pay out of the Fund to any such Custodian such remuneration for their services as the Trustee considers appropriate;
- (4) The Trustee may remove from office any Custodian appointed pursuant to this Clause.

### **23.5 Consultants and Officers**

In addition, the Trustee from time to time may appoint and remunerate such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

### **23.6 Removal**

The Trustee may remove from office any person or company appointed to any position under this Clause and shall remove any such person or company where so required by the Relevant Law.

### **24. Actuarial Investigations**

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or to act upon the advice so provided except in circumstances required by the Relevant Law.

## **Part 7**

### **25. Contributions to Fund**

#### **25.1 Minimum and Maximum Contributions to the Fund**

The Trustee may set a minimum and a maximum amount of Contributions that can be paid to the Fund for any Member for any given period.<sup>42</sup>

#### **25.2 Member's Contributions**

- (1) Subject to Clause 25.1, a Member may make any Contributions to the Fund.
- (2) Unless the Trustee otherwise determines or the Relevant Law does not allow, the Contributions payable by a Member may, with the Member's consent, be deducted by the Participating Employer from each wage or salary payment and shall be paid by the Participating Employer to the Fund as directed by the Trustee in accordance with the Relevant Law PROVIDED THAT if no such deduction is made the Member shall pay Contributions to the Fund in such manner and at such times as shall be agreed upon between the Trustee and that Member.

#### **25.3 Employer's Contributions**

Contributions payable by any Participating Employer shall be paid to the Trustee in such manner and at such times as outlined in the Rules of a Division or as shall be agreed between the Trustee and that particular Participating Employer.

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<sup>42</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007.

#### **25.4 Additional Contributions**

An Employer or Member may make such additional Contributions to a Division if permitted by the Rules of that Division as the Trustee may from time to time agree. Those Contributions shall be applied by the Trustee as the Employer or Member, as the case may be directs and as agreed by the Trustee. The Trustee may require that a particular Employer shall make additional contributions in respect of some or all of its employees or former employees who are Beneficiaries and the Employer shall comply with that requirement.

#### **25.5 Allocation of Contributions**

The Trustee must allocate all Contributions made by or in respect of a Member to the Member's Contribution Account within 28 days after the end of the month in which the Contribution was received or within such longer period as is reasonable in the circumstances or is required by the Relevant Law.

#### **25.6 Refund or Transfer of Payments**

If any monies paid to the Fund will or may jeopardise the status of the Fund as a Complying Superannuation Fund or, in the opinion of the Trustee, may have been paid by mistake (whether of law or of fact) or the Contributions are not able to be otherwise accepted under the Relevant Law or subject to any cooling-off requirements of the Relevant Law, the Trustee may refund those monies to the person who paid them to the Fund or transfer them pursuant to Clause 26.1. Subject to the Rules and the Relevant Law, the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those monies in any way and a person shall not be deemed to have become an Employer or a Member merely by reason of the receipt of the Trustee of those monies. Non-concessional contributions which are refunded due to exceeding the relevant cap may be adjusted for changes in price of the product and reasonable administration and transaction costs.<sup>43</sup>

#### **25.7 Refund of Government Co-Contributions**

If the Trustee has received an overpayment of a Government Co-Contribution in respect of a Member, the Trustee must repay the required amount to the Regulator within the time prescribed in the *Superannuation (Government Co-contribution for Low-Income Earners) Act 2003*.

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<sup>43</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007.

#### **25.8 Interest on Contributions**

The Trustee may require a Participating Employer to pay interest at a rate determined by the Trustee and any collection costs on any of its Contributions which are in arrears or may require a Participating Employer or Member, as appropriate, to pay interest on any Member's Contributions which are in arrears.

#### **25.9 Contributions in Cash or Assets**

Any Contributions made by a Member, Participating Employer or other person shall be made to the Trustee within the Fund Year in respect of which it is paid or within such period as the Relevant Law may allow either in cash or by transfer of an asset or assets PROVIDED THAT the Trustee allows such a transfer of assets and the assets transferred must be authorised investments as set out in Clause 18.2 of this Deed PROVIDED FURTHER THAT any transfer of an asset under this Clause shall be made upon the terms and conditions specified under the Relevant Law, and shall not be made if the Trustee or an agent or delegate of the Trustee is prohibited by the Relevant Law from acquiring the asset.

#### **25.10 No Obligation to Contribute**

In the absence of any agreement to the contrary neither a Member nor a Participating Employer shall be under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member of the Fund notwithstanding a Contribution is not made in respect of that Member in respect of any Fund Year.

#### **25.11 Limitation on Accepting Contributions**

The Trustee must not accept Contributions to the Fund by or in respect of a Member that are not permitted by the Relevant Law.

#### **25.12 Level of Contributions**

The Trustee shall not accept any Contribution or any Shortfall Component:

- (1) if the acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (2) if the Regulator directs the Trustee not to accept any Contributions by a Participating Employer or any Shortfall Component in accordance with the Relevant Law.

### **25.13 Ineligible Contributions**

If the Trustee shall at any time ascertain that any Contribution or Shortfall Component has been accepted in breach of the provisions of this Clause, the Trustee shall refund such Contribution or Shortfall Component within any time period which may be required by the Relevant Law, less any:

- (1) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to that Contribution or Shortfall Component; and
- (2) Taxation and reasonable administration and applicable investment charges,

and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution or Shortfall Component had not been received.

### **25.14 Contributions by and on behalf of a Spouse**

The Spouse of a Member may, with the consent of the Member and the Trustee, make Contributions to the Fund in respect of that Member notwithstanding that the said Spouse may also be a Member of the Fund in their own right. A Spouse Member may also make contributions on its own behalf.

### **25.15 Direct Payment**

- (1) The Trustee shall only be responsible for Contributions which are received by the Trustee from the relevant Participating Employer PROVIDED THAT Contributions shall be deemed to have been received by the Trustee if with the consent of the Trustee. Contributions are to be paid by the Participating Employer to the Administrator with such information with respect to the Contributions as is required by the Trustee.
- (2) The Trustee may, but shall not be required to take any action to recover unpaid Contributions from the Participating Employer.

### **25.16 Refusal of Small Contributions**

The Trustee may refuse to accept Contributions by or in respect of a Participating Employer or Member if having regard to the amount of the Contribution and prospective Contributions and the Account of the Member for the time being:

- (1) the Trustee determines that the Member may become a Small Balance Member;

- (2) the Trustee determines that it is not fair and reasonable as between the Member and other Members of the Fund that the Contribution be accepted and held by the Fund without the Member's Account being debited for the time being with an equitable proportion of the costs and expenses of the administration of the Fund; and
- (3) the Participating Employer does not pay to the Fund an additional amount as determined by the Trustee to cover the equitable proportion of such costs to the extent not permitted to be charged to the Member's Account;

PROVIDED THAT the Participating Employer may arrange for the remittance of Contributions not so accepted (**Rejected Contribution**) to an Approved Benefit Arrangement and the Trustee shall then accept from such Approved Benefit Arrangement the transfer to the Fund of an amount representing an accumulation of Rejected Contributions (with or without interest) as and when such amount is such that the Trustee would not refuse to accept the Rejected Contributions as a Contribution under this Clause, subject to the relevant Employee then being a Member.

#### **25.17 Apportionment Between Members**

With each payment of Contributions to the Trustee, the Participating Employer shall advise such details with respect to those Contributions as shall be required by the Trustee.

#### **25.18 Other Contributions**

The Trustee may accept any other Contribution permitted by the Relevant Law.

### **26. Transfers to Approved Benefit Arrangements**

#### **26A Contributions Splitting<sup>44</sup>**

##### **26A.1 Member application for contributions splitting**

From 1 July 2006 a Member of the Fund may in a financial year apply to the Trustee to roll over, transfer or allot some or all of the Members Splittable Contributions made by or in respect of the Member in the previous financial year to the Member's Spouse.

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<sup>44</sup> This clause titled "Contribution Splitting" was inserted by Deed of Variation dated 4 May 2006, effective 4 May 2006

## 26A.2 Acceptance of contributions splitting application

The Trustee from 1 July 2006 may accept an application to roll over, transfer or allot Splittable Contributions if:

- (1) The Member has not already made an application in the same financial year in relation to the same Spouse which has been given effect or is being considered by the Trustee;
- (2) The amount of the Splittable Contributions to which the application relates does not exceed the Maximum Splittable Amount under the Relevant Law;
- (3) The Member's Spouse is not:
  - (a) Aged 65 years or more; or
  - (b) Aged between their Preservation Age and 65 years and permanently retired;

and the Spouse has provided a statement to the Trustee confirming either that they are aged less than their relevant Preservation Age or they are between their Preservation Age and 65 years and not permanently retired.

- (4) The Trustee has no reason to believe that the Spouse statement in (3) above is untrue.
- (5) The Member has specified in the application the amount of Taxed Splittable Contributions and Untaxed Splittable Contributions that the Member is seeking to split;
- (6) The amount of Untaxed Splittable Contributions specified in the application is less than or equal to the amount of undeducted contributions that would form part of an Superannuation Lump Sum if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application;<sup>45</sup>
- (7) The amount of Taxed Splittable Contributions specified in the application is less than or equal to the taxed element of the Post June 1983 component

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<sup>45</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

that would form part of an Superannuation Lump Sum if the Member withdrew their entire Benefit at the time of the Trustee giving effect to the application,<sup>46</sup>

- (8) The Splittable Contributions do not comprise part of a defined benefit component of a defined benefit interest in the Fund;
- (9) The Splittable Contributions are not subject to a family law Payment Split or Payment Flag.
- (10) Any fee decided by the Trustee to be charged to the Member to implement a transfer of Splittable Contributions has been paid.

#### **26A.3 Trustee conditions on Splitting Application**

Notwithstanding Clause 26A.2 above the Trustee may accept a contributions splitting application in any circumstances permitted by the Relevant Law or may impose such conditions as it decides on the acceptance of a contributions splitting application.

#### **26A.4 Time for implementing split**

If the Trustee accepts a contributions splitting application it will as soon as practicable and in any case within 90 days after receiving the application or within such other time as the Relevant Law permits, rollover, transfer or allot the relevant Splittable Contributions to the Member's Spouse.

#### **26A.5 Regulator to be given statement**

If the Trustee accepts a contributions splitting application the Trustee shall give to the Regulator the statement required by the Relevant Law (if any) in relation to the resulting Contributions-Splitting Superannuation Benefit paid.<sup>47</sup>

#### **26A.6 Trustee can reject application**

The Trustee has discretion to reject any contributions splitting application made by a Member and may in its discretion notify the Member that such application has been

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<sup>46</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>47</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

rejected because the application, if accepted, would leave insufficient funds to meet a tax liability, to pay Fund expenses or to meet other costs.

**26A.7 Section 290-170 Notice must be given before application**

Except as otherwise provided by the Relevant Law the Trustee cannot accept a notice provided by a Member under Section 290-170 of the Tax Act in respect of Contributions which are the subject of a contributions splitting application already lodged with the Trustee which has not been rejected.<sup>48</sup>

**26.1 Transfers to Approved Benefit Arrangements**

Where a Member joins or is eligible to join any Approved Benefit Arrangement and requests the transfer of the whole or part of his or her entitlement in the Fund, or if the Trustee wishes to transfer the whole or part of the entitlement held on behalf of a Member to an Approved Benefit Arrangement where the Member is not at the time of the transfer a participant in that Approved Benefit Arrangement, and the Relevant Law enables such a transfer to take place, then the Trustee may transfer the whole or any part of the amount in the Fund representing the Member's Benefit or Benefit Entitlement to the trustee of the Approved Benefit Arrangement PROVIDED THAT a transfer may only be made pursuant to this Clause where the Trustee is satisfied that:

- (1) the transfer is permitted under, and is made in accordance with, the Relevant Law; and
- (2) the rights of the Member or the Beneficiaries of the Member to receive the Benefits arising from the amount transferred are fully secured.

**26.2 Effect and Method of Transfer Out**

- (1) The receipt of the transferred amount by the proper officer of the Approved Benefit Arrangement shall be a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee shall have no responsibility to see to the application of the transferred amount.
- (2) Upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause all the rights and interest of that Member or Beneficiary under this Deed (and all the rights

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<sup>48</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

and interest of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the transferred amount shall be entirely extinguished.

### 26.3 Roll Over

Where a Member or former Member wishes to effect a Roll Over Payment or an Internal Roll Over in respect of all or any of the entitlement of the Member in the Fund, the Member shall:

- (1) make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment or Internal Roll Over is to be made and the amount to be applied as the Roll Over Payment or Internal Roll Over or the percentage of the Member's Account or Pension Account to be applied as the Roll Over Payment or Internal Roll Over; and
- (2) complete and execute a notification of the Roll Over Payment or Internal Roll Over or such other documentation as shall be required by the Tax Act to enable the Roll Over Payment or Internal Roll Over to be effected to the Approved Benefit Arrangement in accordance with the Relevant Law.

### 26.4 Rollover or Transfer of Leaving Service Benefit

- (1) Upon the written request of a Member, the Trustee must roll over or transfer the whole or part of the Member's Leaving Service Benefit in accordance with the Member's request as soon as practicable, and in any event within 30 days (or such other time permitted by the Relevant Law after:
  - (a) the Trustee receives the Portability Request; or
  - (b) if the Trustee requires further information – the time when the Trustee receives all of that required information; or
  - (c) if the Trustee is suspended from the obligation to rollover the benefit by the Regulator – the end of the period of suspension; or
  - (d) if part or all of the Member's benefits comprise of an illiquid investment – within the time permitted under the Relevant Law; or
  - (e) in such timeframe as the Relevant Law otherwise permits.<sup>49</sup>

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<sup>49</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (2) The Trustee may refuse a Member's request under Clause 26.4(1) in the circumstances set out in the *Superannuation Industry (Supervision) Act 1993*.

#### **26.5 Eligible Rollover Funds**

The Trustee may in accordance with the Relevant Law and, where required by the Relevant Law the Trustee shall, transfer a Member's Benefit to an Eligible Rollover Fund and shall provide any information to the trustee of the Eligible Rollover Fund at such time and in such manner as required by the Relevant Law.

#### **26.6 Preserved Payment Transfers**

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the amount transferred or rolled-over to an Approved Benefit Arrangement, the Trustee shall ensure that the governing rules of the Approved Benefit Arrangement provide that if the Member wishes to leave the Approved Benefit Arrangement the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Law.

#### **26.7 Lost Members**

Where the Trustee transfers the Benefits of a Lost Member to another Approved Benefit Arrangement, the Trustee shall give such information to the trustees of the other Approved Benefit Arrangement at such time and in such manner as required by the Relevant Law.

### **Part 8**

#### **27. Transfers From Approved Benefit Arrangements**

##### **27A Trustee May Receive Splittable Contributions<sup>50</sup>**

27A.1 From 1 January 2006 where a Member of the Fund is the Spouse of another Member of the Fund or the Spouse of a member of another Approved Benefit Arrangement the Trustee may accept into the Fund on behalf of the Member the roll over (including internal roll over), transfer or allotment of a Contributions-Splitting Superannuation Benefit provided the Trustee receives all information it requires.<sup>51 52</sup>

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<sup>50</sup> This clause titled "Trustee May Receive Splittable Contributions" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

<sup>51</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

### **27.1 Takeover or Transfer of Benefits**

Subject to Clause 27.2, where a person who is or will be admitted as a Member (**Relevant Person**) is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement, the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of transfer.

### **27.2 Rights and Entitlements of Member in Transferred Benefits**

The Trustee shall hold any such amounts transferred in accordance with Clause 27.1 above as part of the Fund and if the Trustee so decides reflect such equivalent rights, entitlements and interests in the particular Member's Account or Pension Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Relevant Person shall be deemed to have become a Member of the Fund on the date the Relevant Person became a member of the Approved Benefit Arrangement from which the Benefit was transferred.<sup>53</sup>

### **27.3 Consent of Relevant Person**

If a resolution of the kind referred to in Clause 27.1 is made in circumstances where, for the purposes of the transfer, the Fund will be a Successor Fund of the other Approved Benefit Arrangement, the Trustee is not required to obtain the consent of the Relevant Person. Otherwise, the resolution may only be carried into effect with the prior consent of the Relevant Person.

## **Part 9**

### **28. Moneys Owing to Fund**

Where a Member owes any moneys to the Fund, (including costs of any civil proceedings together with interest on those moneys at a rate determined by the Trustee) the Trustee may debit the Account of the Member for a sum equivalent to the moneys owing from that part of the

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<sup>52</sup> Clause 27A.2 was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>53</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

Benefit of the Member which would otherwise be payable and the Trustee shall retain those moneys in the Fund.

## **Part 10 Deleted<sup>54</sup>**

### **29. Deleted<sup>55</sup>**

## **Part 11**

### **30. Payment of Benefits on Death**

#### **30.1 Payments to Dependants or Legal Personal Representatives**

Subject to the Relevant Law and Clause 40, upon the death of a Member or Beneficiary who had Dependants, the Trustee shall pay or apply the Benefit of one or more of the Member's or Beneficiary's Dependants (including any Nominated Beneficiaries) and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee shall from time to time in its discretion determine PROVIDED THAT the payment of the Benefit shall comply with the Relevant Law.

#### **30.2 Payments to Other Persons**

Upon the death of a Member or Beneficiary who had no Dependants, the Trustee shall pay the Benefit to the Legal Personal Representative of the Member or Beneficiary, or if there is no Legal Personal Representative may pay or apply the Benefit in such a manner as permitted by the Relevant Law.<sup>56</sup>

#### **30.3 Discharge of Trustee**

The receipt by a Dependant, the Legal Personal Representative, Relative or other person of a Benefit paid under this Clause shall be a complete discharge to the Trustee in respect of any amount paid to that person and the Trustee shall not be bound to see to the application thereof.

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<sup>54</sup> Part 10 titled "Forfeiture of Benefit Entitlements" was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>55</sup> Clauses 29.1, 29.2 and 29.3 were deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>56</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

#### **30.4 Pensions**

If a death benefit is paid in the form of a Pension it will only be paid to those Dependants or others eligible to receive the Pension in accordance with the Relevant Law.<sup>57</sup>

### **31. Payment of Benefits**

#### **31.1 Address for Benefits**

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member or Beneficiary. The Trustee may forward the Benefits to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee shall determine.

#### **31.2 Notification of Address**

Every Member or Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Member or Beneficiary, shall (except where no further Benefit is payable from the Fund) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address at any time of:

- (1) the place of residence of the Member or Beneficiary and the full postal address of that residence; and
- (2) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.

#### **31.3 Receipt for Benefits**

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in a form from time to time required by the Trustee.

#### **31.4 Notification of Claims and Proofs**

Where a Benefit is payable to or in respect of a Member, prior to payment of the Benefit the Trustee shall notify:

- (1) the Member, in the case of a Benefit payable to the Member;
- (2) the Nominated Beneficiary, the Reversionary Beneficiary, the Legal Personal Representative, any known Dependants or any other person who the Trustee reasonably believes may have an

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<sup>57</sup> The clause titled "Pensions" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

entitlement to or an interest in the Benefit, in the case of a Benefit payable on death of a Member;

- (3) in any other case, such persons as the Trustee reasonably believes may have an entitlement to or interest in the Benefit,

in writing of the period within which the person may seek to claim an entitlement to the Benefit and where a person has produced to the Trustee such evidence, done all such acts and executed all such documents as the Trustee may reasonably require in order to satisfy the Trustee that the person is entitled to the payment of part or all of the Benefit under this Deed, the Trustee shall pay such Benefit PROVIDED THAT the Trustee must notify in writing any person mentioned in this Clause of the period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.

#### **31.5 Notification Outside Time Limit**

Where a person has failed to notify the Trustee of a claim or of the intention to make a claim within the period determined by the Trustee in Clause 31.4, no payment shall be made to the person unless the Trustee is satisfied that such a payment may be made from the Fund in accordance with this Deed and the Relevant Law.

#### **31.6 No Personal Claim**

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member shall be entitled to require payment of that Member's interest in the Fund except as may be provided in this Deed.

#### **31.7 Payment to Others on Behalf of Beneficiaries**

When any Beneficiary is under the age of 18 years or is under any legal disability or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee shall determine:

- (1) to or towards the maintenance, education, advancement, support or benefit of the Beneficiary in such manner and on such terms and conditions as the Trustee shall determine; or
- (2) to any other person who appears to the Trustee to be a trustee for the Beneficiary or Spouse, Child, parent or guardian or a person having custody of the Beneficiary for application on behalf of the Beneficiary,

and the receipt of the person to whom the Benefit is paid shall be a complete discharge of the Trustee for the payment in respect of the Beneficiary and the Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

### 31.8 Preservation Conditions

Notwithstanding any other provision of this Deed which may be construed to the contrary:

- (1) no Member or Dependant of a Member shall be entitled to receive any Benefit which is a Preserved Payment Benefit prior to the Member ceasing Gainful Employment on or after reaching the their Preservation Age or such other prescribed age otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances permitted by the Relevant Law;
- (2) any Pension or Annuity that a Member or the Dependents of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or the Dependents of a Member have a right to receive from the Fund are to be paid, at such time as is permitted or required by the Relevant Law;<sup>58</sup>
- (3) any Preserved Payment Benefit held by the Trustee which is unable to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with Clause 26, or be retained in the Fund subject to Clause 38;
- (4) the Trustee, can on the request of a Member who satisfies a condition of release specified by the Relevant Law, pay the Preserved Payment Benefit to the Member.

### 31.9 Payment of Benefits<sup>59</sup>

- (1) Subject to clause 31.9(2) the Trustee may pay out a Member's benefit in accordance with the Relevant Law.
- (2) The Trustee may roll over a Member's Benefits to another Approved Benefit Arrangement as soon as practicable for immediate cashing instead of paying the Benefit to the Member.<sup>60</sup>

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<sup>58</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective date 10 May 2006

<sup>59</sup> This heading and clause were amended by Deed of Amendment dated 14 December 2006, effective 10 May 2006

<sup>60</sup> Clause 31.9(3) was deleted by Deed of Amendment dated 14 December 2006, effective 10 May 2006

### **31.10 Unclaimed Benefits**

The Trustee shall give to the Regulator a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Regulator at such time and in such manner as required by the Relevant Law.

### **31.11 Death of Former Member Prior to Benefit Payment**

Where a Member or former Member has become entitled to payment of a Benefit as a lump sum and before payment has been made by the Trustee, the Member or former Member dies, the Trustee may pay that Benefit in accordance with the provisions of Clause 30.<sup>61</sup>

### **31.12 Limitation on Benefits**

Notwithstanding any other provision of this Deed, the Trustee shall not pay out any Benefits to Members, Dependants or Beneficiaries where such payment would cause the Fund to breach the Relevant Law.

## **Part 13**

### **32. Payment of Taxation and Levies**

#### **32.1 Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

#### **32.2 Tax on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Account of the Member.

#### **32.3 Tax on Income**

The Trustee may make provision for and shall deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this Clause from the Income Account or from Accounts or Pension Accounts of Members.

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<sup>61</sup> This clause was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

#### **32.4 Surcharge**

The Trustee may make provision and shall deduct any surcharge or other amount of whatever description levied on a Division of the Fund in respect of a Member, pursuant to the *Superannuation Contributions Tax Imposition Act 1997* and related legislation (including provisional or advance payments required under that legislation). The Trustee shall adjust the Benefit of the said Member to reflect the cost to the Fund of the cost of the payment.

#### **32.5 Payment to Relevant Authority**

The Trustee shall pay all Taxation which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act, and any Levy which is due and payable by the Fund, to the relevant authorities within the required time for payment.

#### **32.6 Payment made pursuant to Release Authority**

The Trustee shall pay all Taxation required to be paid on behalf of a Member pursuant to a Release Authority given to the Trustee for payment of an excess contributions tax assessment.<sup>62</sup>

### **Part 14**

#### **33. Policies of Insurance**

##### **33.1 Trustee to effect Policy**

The Trustee may effect Policies in its own name with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another. The Trustee shall not be responsible or liable to a Member, a Member's Legal Personal Representative or the Dependants of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies.

##### **33.2 Trustee Right to Rectify**

The Trustee has the right to rectify any Member's insurance cover or insurance information if it is subsequently found to be incorrect as a result of an administrative error on the part of the Trustee and the Trustee will not be liable to the Member for any such rectification. The Trustee must notify the Member in writing of any such rectification.

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<sup>62</sup> This clause titled "Payment made pursuant to Release Authority" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

### **33.3 Premiums for Policy**

The premiums for any Policy effected may be debited to the Income Account or directly to the Account of the Member in respect of whom the Policy is effected or alternatively in such proportions amongst other Members as the Trustee considers to be equitable which premiums may be debited against the Member's Benefit.

### **33.4 Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it shall determine. If cover has been declined by an Insurer in respect of a Member, the Trustee is under no obligation to arrange alternative insurance policies.

### **33.5 Establishment of Advisory Panels**

The Trustee may establish one or more panels comprised of people it considers suitably qualified to advise it on matters arising in relation to any Insured Benefit and any other matters it considers necessary or desirable.

### **33.6 Payment of Insured Benefit**

If and to the extent that any Insured Benefit is being provided, whether in respect of death or disability of a Member or otherwise, the Trustee shall not be obliged to make or commence payment of the Insured Benefit except as and to the extent that moneys for the Insured Benefit are received by the Trustee from the Insurer and credited to the Member's Account.

### **33.7 Recovery of Insured Benefit**

The Trustee shall take all reasonable steps to recover amounts due under any Policy from the Insurer but shall not be obliged to do so unless either it considers an amount is due or it receives from the Member concerned (or from the Legal Personal Representative of the Member if deceased or otherwise incapacitated) such indemnities as it may require against any costs, claims or expenses which it may incur in respect of any actions for recovery of an amount which may be due.

## **Part 15**

### **34. Variation of Trust Deed**

The provisions of this Deed including this Clause may be added to, amended, altered, modified, rescinded or varied (**Variation**) from time to time by the Trustee either prospectively or retrospectively on the following basis:

#### **34.1 Deed**

The Variation shall be by Deed executed by the Trustee and a copy of such Deed shall be forwarded to the Regulator and each Participating Employer if required by the Relevant Law.

#### **34.2 Notice**

On any Variation being effected, the Trustee shall if so required by the Relevant Law advise the Members and Beneficiaries in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required under the Relevant Law.

#### **34.3 Limitation on Variation**

No Variation shall have the effect of:

- (1) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which have arisen prior to the Variation being effected; or
- (2) reducing the amount of an entitlement other than an entitlement referred to in Clause 34.3(1) that is or may become payable in relation to a period before the date of the Variation, unless:
  - (a) the reduction is required to enable the Fund to comply with the Relevant Law; or
  - (b) the Member so affected consents in writing to the reduction; or
  - (c) the Regulator consents in writing to the reduction,

PROVIDED THAT each Variation shall comply with the Relevant Law.

#### **34.4 Further limitation on Variation**

No Variation to this Deed shall:

- (1) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age Pensions within the meaning of the Relevant Law, unless the Trustee of the Fund is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (2) permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Deed provides that the sole or primary purpose of the Fund is the provision of old-age Pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

#### 34.5 **Omission**

Any accidental failure or omission to give the notification referred to in Clause 34.2 or its non-receipt shall not prejudice or invalidate the Variation.

### **Part 16**

#### **35. Winding up of Fund**

##### **35.1 Election to Terminate**

The Trustee may elect to wind up the Fund at a certain date (**Termination Date**) in the following circumstances:

- (1) if there are no further Members remaining in the Fund;
- (2) if the Trustee determines for any reason that the Fund should be wound up; or
- (3) if it is required by the Regulator.

##### **35.2 Procedure on Winding Up of Fund**

Where the Fund is to be wound up the Trustee shall:

- (1) give written notice to each Participating Employer and Member that the Fund is to terminate on the Termination Date;
- (2) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with Clause 35.3, after deducting from the assets of the Fund all the costs and expenses of administering and winding up the Fund.

### **35.3 Exhaustion of Fund**

The Trustee shall pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (1) Benefits to which Members, former Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
- (2) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate.

## **Part 18**

### **36. Payment of Non-Preserved Amounts**

Notwithstanding any other provisions of this Deed which may be construed to the contrary and subject to the Relevant Law:

#### **36.1 Member Election**

A Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;

#### **36.2 Minimum Payment**

The minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to Clause 36.1 shall be determined by the Trustee and notified to Members of the Fund.

### **37. Increases to Benefits**

In circumstances where a Member ceases to be a Member of a Division of the Fund, the Trustee may determine to pay some part of the Investment Fluctuation Reserve which the Trustee considers represents the interest of that Member in that Account to the Member's Account for purposes of the payment of a Benefit.

### **38. Retention of Benefit In Fund**

Where a Member or Beneficiary does not require a Benefit to be immediately paid, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable in the relevant Division of the Fund or

transfer the Benefit from one another Division of the Fund to another Division of the Fund until:

**38.1 Request**

The Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

**38.2 Death**

The Member dies, in which event it will be paid in accordance with Clause 30;

**38.3 Payment otherwise required**

Payment of the Benefit is required in accordance with the provisions of this Deed or the Relevant Law; or

**38.4 Discretion**

The Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Account as at the date of payment PROVIDED HOWEVER that all Benefits must be paid at such time and in such manner as shall be required by the Relevant Law.

**Part 19**

**39. Marketing and Promoting Fund**

**39.1 Activity**

For the purposes of this Clause, any act directly or indirectly related to or incidental to the marketing, promoting, advertising or educating of any person or the creation of awareness for any person is an activity (**Activity**).

**39.2 Promotion to Increase Membership**

The Trustee may, subject to the Relevant Law, engage in any Activity which the Trustee determines will promote:

- (1) the concept of superannuation generally;
- (2) the Fund specifically;

in order to limit the reduction in the level of Membership, to increase the level of Membership or for any other purpose which the Trustee believes is in the best interests of the Members.

### **39.3 Defence of Fund Contribution Base**

The Trustee may, subject to the Relevant Law, engage in any Activity which the Trustee determines will protect the Contributions base or Membership base of the Fund and which the Trustee believes is in the best interests of Members.

### **39.4 Exercise of Powers of Marketing and Promotion**

The Trustee may only exercise the powers under this Clause where the Trustee has determined that:

- (1) the Activity is in the best interests of the present and future Membership of the Fund;
- (2) the expense of the Activity is reasonable having regard to the likely benefits to the present and future Membership; and
- (3) the expense of the Activity is reasonable having regard to the total value of the assets of the Fund.

### **39.5 Engagement of Adviser**

The Trustee may engage the services of any suitably qualified persons to advise on, be involved in or to implement any Activity and may remunerate those persons in respect of any advice, involvement or implementation in accordance with the powers set out in this Deed. The Trustee may terminate the services of the persons appointed at any time.

## **Part 20**

### **40. Family Law Act Provisions**

#### **40.1 Trustee to Provide Information**

- (1) If the Trustee receives an application in the manner set out in Clause 40.1(2) from a FLA Eligible Person in respect of an Account of Member for information about that account then the Trustee must provide the FLA Eligible Person the information about the Member's account and any other information as set out in the Relevant Law.

- (2) The application referred to in Clause 40.1(1) must be accompanied by:
  - (a) a declaration, in the prescribed form as set out in the Relevant Law, stating that the applicant requires the information for either or both of the following purposes:
    - (i) to assist the applicant to properly negotiate a Superannuation Agreement;
    - (ii) to assist the applicant in connection with the operation of the *Family Law Act 1975* in relation to the applicant; and
    - (iii) the fee as determined by the Trustee for providing such information to the applicant.
- (3) The Trustee must not, in response to an application under Clause 40.1(1) by a Non Member Spouse, provide the Non Member Spouse with any address of the Member. For this purpose, address includes a postal address.
- (4) If the Trustee received an application under Clause 40.1(1) from a person other than the Member, the Trustee must not inform the Member that the application has been received.
- (5) The Trustee shall provide such other information to a Non Member Spouse as is required pursuant to the Relevant Law.

#### 40.2 **Payment Flags**

- (1) If the Trustee receives a Payment Flag in respect of a Member's account then whilst the Payment Flag is operating the Trustee must not make a Splittable Payment to any person from that Member's account.
- (2) If a Splittable Payment becomes payable in respect of a Member's account whilst a Payment Flag is operating the Trustee must within 14 days after the first Splittable Payment becomes payable give written notice to the member and the Non Member spouse of that fact and the Trustee must provide any other information as and when required under the Relevant Law.
- (3) If the Trustee receives notice of a Superannuation Agreement, Flag Lifting Agreement or a court order to terminate the Payment Flag pursuant to the Relevant Law then the Trustee must comply with such Superannuation Agreement, Flag Lifting Agreement or a court order, as the case may be.

#### 40.3 **Payment Splits**

- (1) The Trustee must comply with the Relevant Law in transferring any amount or making a Payment Split from a Member's account to the Non Member Spouse or to such other account or fund as is allowable pursuant to the Relevant Law.
- (2) Any Non Member Spouse who is not already a Member may apply to the Trustee to become a Member and have any amount the subject of Payment Split transferred from the Member's account into the Non Member Spouse's account as per the requirements of the Relevant Law.
- (3) If a new account is established for the Non Member Spouse then the Trustee will comply with the Relevant Law in respect of the information that needs to be provided to the Non Member Spouse.
- (4) The Trustee must comply with the Relevant Law in respect of the payment, transfer, roll-over and creation of a new interest of a Non Member Spouse's interest in a Member's account including (but not limited to):
  - (a) complying with any request received by the Non Member Spouse in respect of the Payment Split;
  - (b) the determination of the minimum benefits for the Non Member Spouse and Member after the Payment Split;
  - (c) the payment, transfer or roll over of the Non-member Spouse's interest in the Member's account into a new interest in the Fund, payment directly to the Non Member Spouse, transfer or roll over into another Approved Benefit Arrangement.

#### 40.4 **Payments that are into Splittable Payments**

The Trustee will comply with the Relevant Law in dealing with a Member's Account if the Member's superannuation interest is not capable of being the subject of a Payment Split or the payments to the Member are not Splittable Payments.

#### 40.5 **Fees**

- (1) In addition to any fees the Trustee may determine pursuant to Clause 22 of the Trustee may charge reasonable fees in respect of any of the following:
  - (a) a Payment Split;

- (b) a Payment Flag;
  - (c) Flag Lifting under a Flag Lifting Agreement that does not provide for a Payment Split;
  - (d) an order under the *Family Law Act 1975* terminating the operation of a Payment Flag;
  - (e) any other thing done by the Trustee in relation to a superannuation interest covered by a Superannuation Agreement, Flag Lifting Agreement or Splitting Order; and
  - (f) an application under the *Family Law Act 1975* for information about a superannuation interest.
- (2) A fee payable in respect of a matter mentioned in Clause 40.5 is payable:
- (a) subject to Clause 40.5(2)(b) by the Member and the Non Member Spouse in equal parts; or
  - (b) if the fee is in respect of a Payment Split under which the Non Member Spouse is entitled to be paid the whole of the amount of each Splittable Payment that becomes payable by the Non Member Spouse.
- (3) A fee payable in respect of an application mentioned in Clause 40.5(1)(f) is payable by the person who makes the application.
- (4) Where a Member is eligible for payment of a Benefit in accordance with 40.5(1)(a) and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit into Division 4.

## Section 2

### Division 1 - Rules of Media Super- Employer Plan<sup>63</sup>

#### 1. Application of Rules

These Rules apply to Employers and Members of the Media Super-Employer Plan established under Clause 3.3 of this Deed.<sup>64</sup>

#### 2. Interpretation

Definitions

In these Rules, unless otherwise defined in Clause 1 of the Deed:

- (1) **Account** means the Member's Employer Accounts and Member Accounts;
- (2) **Award Account** means an account maintained in respect of a Member which is credited with Units arising from Contributions made in satisfaction of an obligation to contribute under a prescribed agreement or Industrial Award;
- (3) **Employer Accounts** means one or more of the following accounts maintained by the Trustee in respect of a Member:
  - (a) Award Account;
  - (b) Guarantee Act Account;
  - (c) Employer Voluntary Account; and
  - (d) such other Accounts established under these Rules by the Trustee and designated as an Employer Account;
- (4) **Employer Reserve Account** means an Account which is credited with Units arising from Contributions or other monies required to be paid into the Account pursuant to an eligible application or the provision of Clause 27 of the Deed;<sup>65</sup>

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<sup>63</sup> This heading was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>64</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>65</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (5) **Member Accounts** mean one or more of the following Accounts maintained by the Trustee in respect of a Member:
- (a) Member's Contribution Account;
  - (b) Roll Over Account;
  - (c) such other Accounts established under these Rules by the Trustee and designated as a Member Account;
- (6) **Member's Contribution Account** means an Account maintained in respect of a Member which is credited with Units arising from Contributions by the Member or an Eligible Person;
- (7) **Plan** means the Media Super – Employer Plan;<sup>66</sup>
- (8) **Roll Over Account** means an Account maintained in respect of a Member which is credited with Units arising from Roll Over Payments or Superannuation Lump Sum.<sup>67</sup>

### **3. Membership**

#### **3.1 Membership Criteria**

- (1) There shall be one class of Membership under this Division and Members shall be designated as ordinary Members PROVIDED HOWEVER that the Trustee shall have the power to create such other Membership classes with such rights, costs and entitlements as the Trustee shall determine.<sup>68</sup>
- (2) The provisions of this Division shall apply to Members who are Employees and have been nominated in writing by a Participating Employer for Benefits under Clause 6.4(1) and accepted for Membership under Clause 6.6 of this Deed.

#### **3.2 Application of this Part**

The Membership classification, Contributions payable by or in respect of, and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division PROVIDED THAT the Member shall not be precluded from becoming a Member of another Division.

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<sup>66</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>67</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>68</sup> Rule 3.1(1) was inserted by Deed of Variation dated 26 June 2008, effective 1 July 2008 and Rule 3.1(2) was re-numbered accordingly

### **3.3 Information**

The Member shall be required to provide such information as required in Clause 6 of this Deed.

## **4. Contributions**

### **4.1 Member Contributions**

A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 25 (including any Contributions payable to a Division for or on behalf of his or her Spouse who is also a Member of the Fund) of this Deed.

### **4.2 Spouse Contributions**

A Spouse of a Member admitted to the Fund pursuant to Clause 6.4(3) of this Deed shall not be obliged to make Contributions to the Division for or on behalf of the Member but may do so if an agreement with the Trustee is made pursuant to this Deed.

### **4.3 Participating Employer Contributions**

A Participating Employer shall, with the agreement of the Trustee, contribute to the Fund in respect of a Member such amount determined from time to time by the Participating Employer subject to the provisions of Clause 25 of this Deed.

### **4.4 Investment of Contributions and other Monies**

The Trustee shall apply Contributions or other monies received by it in respect of a Member or Spouse Member to apply for Units in one or more investment options as provided by the Trustee in the Plan's Disclosure Document as either selected by the Participating Employer or by the said Member. The Trustee may set aside from the Contributions or other monies such amounts as required as listed in Clause 15 for the payment of any insurance premiums, Taxation, fees or other expenses.

## **5. Accounts**

### **5.1 Establishment**

The Trustee shall establish in respect of each Participating Employer and Members:

- (1) in respect of each Member:

- (a) the Employer Accounts; and
- (b) the Member Accounts;
- (2) in respect to each Participating Employer an Employer Reserve Account as may be required.
- (3) the Trustee may divide the Accounts into sub-accounts.

## 5.2 Maintenance of Accounts

The Trustee may maintain the Accounts in a way that it considers appropriate. This may include recording the value of:

- (1) any Contributions, Roll Over Payments, Shortfall Component and Superannuation Lump Sum paid into the Plan in respect of the Member;<sup>69</sup>
- (2) Units issued and cancelled in respect of the Member;
- (3) the proceeds of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (4) any investment earnings whether positive or negative;
- (5) <sup>70</sup>any amounts credited to or transferred from the Pension Account of a Beneficiary;
- (6) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (7) any amount paid out of the Fund in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;
- (8) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (9) the costs of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary;
- (10) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the

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<sup>69</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>70</sup> Previous Rule 5.2(5) which referred to forfeited benefits was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the remaining Rules were re-numbered accordingly

Fund or earnings of the Fund credited to the Account or arising as a result of a Roll Over Payment as the Trustee may determine;

- (11) such of the costs, charges and expenses incurred in accordance with Clause 22 or an appropriate portion thereof as the Trustee may determine;
- (12) any amount credited to the Pension Account of a Beneficiary;
- (13) any amount of Taxation attributable to the Member or Beneficiary;
- (14) any amount of commission or brokerage payable under Clause 7.8; and
- (15) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.

## **6. Benefits**

### **6.1 Retirement**

- (1) A Member who leaves Service on or after their Preservation Age is entitled to a Benefit equal to their Withdrawal Benefit.
- (2) A Member who is in Service on or after age 65 and requests payment is entitled to a Benefit equal to their Withdrawal Benefit.

### **6.2 Total and Permanent Disablement**

A Member who is, in the Trustee's opinion, Total and Permanently Disabled is entitled to a Benefit equal to the Member's Withdrawal Benefit.

### **6.3 Death**

- (1) On the death of a Member in Service, the Trustee must pay a death Benefit equivalent to the Member's Withdrawal Benefit.
- (2) Subject to the Relevant Law, if the Trustee determines that a Beneficiary is to be paid a Benefit on the death of a Member in accordance with Clause 30, it may, with the consent of the Beneficiary transfer that Benefit to Division 4.

### **6.4 Temporary Disablement**

A Member who is, in the Trustee's opinion, Temporarily Disabled is entitled to the Insured Benefit.

**6.5 Leaving Service**

A Member who leaves Service in circumstances other than Rules 6.1, 6.2, 6.3 or 6.4 is entitled to a Benefit equal to the Member's Withdrawal Benefit.

**6.6 Other Circumstances**

A member shall be entitled to the whole or part of the Member's Account balance in such other circumstances as permitted by the Relevant Law.

**6.7 Pension**

Where a Member is eligible for payment of a Benefit in accordance with the Rules above, and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit to Division 4.<sup>71</sup>

**6.8 General**

A Member cannot receive more than one type of Benefit listed in this Rule unless permitted by the Relevant Law.

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<sup>71</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

## Division 2 - Rules of Media Super - Employer Plan<sup>72</sup>

### 1. Application of Rules

These Rules apply to Employers and Members of the Media Super - Employer Plan established under Clause 3.3 of this Deed.<sup>73</sup>

### 2. Interpretation

Definitions

In these Rules, unless otherwise defined in Clause 1 of the Deed:

- (1) **Account** means the Member's Employer Accounts and Member Accounts;
- (2) **Award Account** means an account maintained in respect of a Member which is credited with Units arising from Contributions made in satisfaction of an obligation to contribute under a prescribed agreement or Industrial Award;
- (3) **Employer Accounts** means one or more of the following accounts maintained by the Trustee in respect of a Member:
  - (a) Award Account;
  - (b) Guarantee Act Account;
  - (c) Employer Voluntary Account; and
  - (d) such other Accounts established under these Rules by the Trustee and designated as an Employer Account;
- (4) **Employer Reserve Account** means an Account which is credited with Units arising from Contributions or other monies required to be paid into the Account pursuant to an eligible application or the provision of Clause 27 of the Deed;<sup>74</sup>
- (5) **Member Accounts** mean one or more of the following Accounts maintained by the Trustee in respect of a Member:

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<sup>72</sup> This heading was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>73</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>74</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (a) Member's Contribution Account;
  - (b) Roll Over Account;
  - (c) such other Accounts established under these Rules by the Trustee and designated as a Member Account;
- (6) **Member's Contribution Account** means an Account maintained in respect of a Member which is credited with Units arising from Contributions by the Member or an Eligible Person;
- (7) **Plan** means the Media Super – Employer Plan;<sup>75</sup>
- (8) **Roll Over Account** means an Account maintained in respect of a Member which is credited with Units arising from Roll Over Payments or Superannuation Lump Sum.<sup>76</sup>

### 3. Membership

#### 3.1 Membership Criteria

- (1) Membership under this Division comprises of:
- (a) Members of the former mychoice – Employer Plan;
  - (b) new Members in this Division from 1 July 2008;
  - (c) transferring JUST SUPER members effective 30 June 2008;

who shall be designated as ordinary Members PROVIDED HOWEVER that the Trustee shall have power to create such other Membership classes with such rights, costs and entitlements as the Trustee shall determine.<sup>77</sup>

- (2) The provisions of this Division shall apply to Members who are Employees and have been nominated in writing by a Participating Employer for Benefits under Clause 6.4(1) and accepted for Membership under Clause 6.6 of this Deed.

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<sup>75</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>76</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>77</sup> Rule 3.1(1) was inserted and Rule 3.1(2) was re-numbered by Deed of Variation dated 26 June 2008, effective 1 July 2008

### **3.2 Application of this Part**

The Membership classification, Contributions payable by or in respect of, and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division PROVIDED THAT the Member shall not be precluded from becoming a Member of another Division.

### **3.3 Information**

The Member shall be required to provide such information as required in Clause 6 of this Deed.

## **4. Contributions**

### **4.1 Member Contributions**

A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 25 (including any Contributions payable to a Division for or on behalf of his or her Spouse who is also a Member of the Fund) of this Deed.

### **4.2 Spouse Contributions**

A Spouse of a Member admitted to the Fund pursuant to Clause 6.4(3) of this Deed shall not be obliged to make Contributions to the Division for or on behalf of the Member but may do so if an agreement with the Trustee is made pursuant to this Deed.

### **4.3 Participating Employer Contributions**

A Participating Employer shall, with the agreement of the Trustee, contribute to the Fund in respect of a Member such amount determined from time to time by the Participating Employer subject to the provisions of Clause 25 of this Deed.

### **4.4 Investment of Contributions and other Monies**

The Trustee shall apply Contributions or other monies received by it in respect of a Member or Spouse Member to apply for Units in one or more investment options as provided by the Trustee in the Plan's Disclosure Document as either selected by the Participating Employer or by the said Member. The Trustee may set aside from the Contributions or other monies such amounts as required as listed in Clause 15 for the payment of any insurance premiums, Taxation, fees or other expenses.

## **5. Accounts**

### **5.1 Establishment**

The Trustee shall establish in respect of each Participating Employer and Members:

- (1) in respect of each Member:
  - (a) the Employer Accounts; and
  - (b) the Member Accounts;
- (2) in respect to each Participating Employer an Employer Reserve Account as may be required.
- (3) the Trustee may divide the Accounts into sub-accounts.

### **5.2 Maintenance of Accounts**

The Trustee may maintain the Accounts in a way that it considers appropriate. This may include recording the value of:

- (1) any Contributions, Roll Over Payments, Shortfall Component and Superannuation Lump Sum paid into the Plan in respect of the Member;<sup>78</sup>
- (2) Units issued and cancelled in respect of the Member;
- (3) the proceeds of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (4) any investment earnings whether positive or negative;
- (5) <sup>79</sup>any amounts credited to or transferred from the Pension Account of a Beneficiary;
- (6) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (7) any amount paid out of the Fund in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;

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<sup>78</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>79</sup> Previous Rule 5.2(5) which referred to forfeited benefits was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the remaining rules were re-numbered accordingly

- (8) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (9) the costs of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary;
- (10) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (11) such of the costs, charges and expenses incurred in accordance with Clause 22 or an appropriate portion thereof as the Trustee may determine;
- (12) any amount credited to the Pension Account of a Beneficiary;
- (13) any amount of Taxation attributable to the Member or Beneficiary;
- (14) any amount of commission or brokerage payable under Clause 7.8; and
- (15) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.

## **6. Benefits**

### **6.1 Retirement**

- (1) A Member who leaves Service on or after their Preservation Age is entitled to a Benefit equal to their Withdrawal Benefit.
- (2) A Member who is in Service on or after age 65 and requests payment is entitled to a Benefit equal to their Withdrawal Benefit.

### **6.2 Total and Permanent Disablement**

A Member who is, in the Trustee's opinion, Total and Permanently Disabled, is entitled to a Benefit equal to the Member's Withdrawal Benefit.

### **6.3 Death**

- (1) On the death of a Member in Service, the Trustee must pay a death Benefit equivalent to the Member's Withdrawal Benefit.
- (2) Subject to the Relevant Law, if the Trustee determines that a Beneficiary is to be paid a Benefit on the death of a Member in

accordance with Clause 30, it may , with the consent of the Beneficiary transfer that Benefit to Division 4.

**6.4 Temporary Disablement**

A Member who is, in the Trustee's opinion, Temporarily Disabled, is entitled to the Insured Benefit.

**6.5 Leaving Service**

A Member who leaves Service in circumstances other than Rules 6.1, 6.2, 6.3 or 6.4 is entitled to a Benefit equal to the Member's Withdrawal Benefit.

**6.6 Other Circumstances**

A member shall be entitled to the whole or part of the Member's Account balance in such other circumstances as permitted by the Relevant Law.

**6.7 Pension**

Where a Member is eligible for payment of a Benefit in accordance with the Rules above, and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit to Division 4.<sup>80</sup>

**6.8 General**

A Member cannot receive more than one type of Benefit listed in this Rule unless permitted by the Relevant Law.

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<sup>80</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

## **Division 3 – Rules of Media Super - Personal Plan<sup>81</sup>**

### **1. Application of Rules**

These Rules apply to Members who are Self-Employed Persons or Employees in respect of whom no Employer makes Contributions or Employees who have been nominated by a Participating Employer for Membership of this Division or for any Eligible Person admitted as a Member to this Plan established under Clause 3.3 of this Deed.

### **2. Application of this Division**

The Membership classification, the Contributions payable by or in respect of, and the Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of this Division PROVIDED THAT a Member under this Division who is an Employee of a Participating Employer shall not be precluded from becoming a Member of Division 1 or Division 2.

### **3. Membership Classification**

There shall be one class of Membership under this Division and Members shall be designated as ordinary Members PROVIDED HOWEVER that the Trustee shall have the power to create such other Membership classes with such rights, costs and entitlements as the Trustee shall determine.

### **4. Interpretation**

Definitions

In these Rules, unless otherwise defined in Clause 1 of the Deed:

- (1) **Account** means the Member's Employer Accounts and Member Accounts;
- (2) **Award Account** means an account maintained in respect of a Member which is credited with Units arising from Contributions made in satisfaction of an obligation to contribute under a prescribed agreement or Industrial Award;

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<sup>81</sup> This heading was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

- (3) **Employer Accounts** means one or more of the following accounts maintained by the Trustee in respect of a Member:
- (a) Award Account;
  - (b) Guarantee Act Account;
  - (c) Employer Voluntary Account; and
  - (d) such other Accounts established under these Rules by the Trustee and designated as an Employer Account;
- (4) **Employer Reserve Account** means an Account which is credited with Units arising from Contributions or other monies required to be paid into the Account pursuant to an eligible application or the provision of Clause 27 of the Deed;<sup>82</sup>
- (5) **Member Accounts** mean one or more of the following Accounts maintained by the Trustee in respect of a Member:
- (a) Member's Contribution Account;
  - (b) Roll Over Account;
  - (c) such other Accounts established under these Rules by the Trustee and designated as a Member Account;
- (6) **Member's Contribution Account** means an Account maintained in respect of a Member which is credited with Units arising from Contributions by the Member or an Eligible Person;
- (7) **Plan** means the Media Super – Personal Superannuation Plan.<sup>83</sup>
- (8) **Roll Over Account** means an Account maintained in respect of a Member which is credited with Units arising from Roll Over Payments or Superannuation Lump Sum.<sup>84</sup>

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<sup>82</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>83</sup> The definition of "Plan" was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>84</sup> The definition of "Roll Over Account" was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

## **5. Membership**

### **5.1 Membership Criteria**

A Self-Employed Person or other Eligible Person will become a Member of the Plan upon its application for membership has been accepted by the Trustee in the form required in the Plan's Disclosure Document.

### **5.2 Information**

The Member shall be required to provide such information as required in Clause 6 of this Deed.

## **6. Contributions**

### **6.1 Member Contributions**

A Member may, with the agreement of the Trustee, contribute to the Division such amount as the Member shall determine subject to the provisions of Clause 25 (including any Contributions payable to a Division for or on behalf of his or her Spouse who is also a Member of the Fund) of this Deed.

### **6.2 Spouse Contributions**

A Spouse of a Member admitted to the Fund pursuant to Clause 6.4(3) of this Deed shall not be obliged to make Contributions to the Division for or on behalf of the Member but may do so if an agreement with the Trustee is made pursuant to this Deed.

### **6.3 Participating Employer Contributions**

A Participating Employer shall, with the agreement of the Trustee, contribute to the Fund in respect of a Member such amount determined from time to time by the Participating Employer subject to the provisions of Clause 25 of this Deed.

### **6.4 Investment of Contributions and other Moneys**

The Trustee shall apply Contributions or other moneys received by it in respect of a Member or Spouse Member to apply for Units in one or more investment options as provided by the Trustee in the Plan's Disclosure Document as either selected by the Participating Employer or by the said Member. The Trustee may set aside from the Contributions or other monies such amounts as required as listed in Clause 15 for the payment of any insurance premiums, Taxation, fees or other expenses.

## **7. Accounts**

### **7.1 Establishment**

The Trustee shall establish in respect of each Participating Employer and Members:

- (1) in respect of each Member:
  - (a) the Employer Accounts; and
  - (b) the Member Accounts;
- (2) in respect to each Participating Employer an Employer Reserve Account as may be required.
- (3) the Trustee may divide the Accounts into sub-accounts.

### **7.2 Maintenance of Accounts**

The Trustee may maintain the Accounts in a way that it considers appropriate. This may include recording the value of:

- (1) any Contributions, Roll Over Payments, Shortfall Component and Superannuation Lump Sum paid into the Plan in respect of the Member;<sup>85</sup>
- (2) Units issued and cancelled in respect of the Member;
- (3) the proceeds of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (4) any investment earnings whether positive or negative;
- (5) <sup>86</sup>any amounts credited to or transferred from the Pension Account of a Beneficiary;
- (6) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (7) any amount paid out of the Fund in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;

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<sup>85</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>86</sup> Previous Rule 7.2(5) which referred to forfeited benefits was deleted by Deed of Variation dated 23 April 2008, effective 1 July 2007 and the remaining rules were re-numbered accordingly

- (8) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (9) the costs of any Policy or Annuity (if any) effected by the Trustee in respect of the Member or Beneficiary;
- (10) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (11) such of the costs, charges and expenses incurred in accordance with Clause 22 or an appropriate portion thereof as the Trustee may determine;
- (12) any amount credited to the Pension Account of a Beneficiary;
- (13) any amount of Taxation attributable to the Member or Beneficiary;
- (14) any amount of commission or brokerage payable under Clause 7.8; and
- (15) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.

## **8. Benefits**

### **8.1 Retirement**

- (1) A Member who leaves Service on or after their Preservation Age is entitled to a Benefit equal to their Withdrawal Benefit.
- (2) A Member who is in Service on or after age 65 and requests payment is entitled to a Benefit equal to their Withdrawal Benefit.

### **8.2 Total and Permanent Disablement**

A Member who is, in the Trustee's opinion, Total and Permanently Disabled, is entitled to a Benefit equal to the Member's Withdrawal Benefit.

### **8.3 Death**

- (1) On the death of a Member in Service, the Trustee must pay a death Benefit equivalent to the Member's Withdrawal Benefit.
- (2) Subject to the Relevant Law, if the Trustee determines that a Beneficiary is to be paid a Benefit on the death of a Member in

accordance with Clause 30, it may, with the consent of the Beneficiary, transfer that Benefit to Division 4.

**8.4 Temporary Disablement**

A Member who is, in the Trustee's opinion, Temporarily Disabled, is entitled to the Insured Benefit.

**8.5 Leaving Service**

A Member who leaves Service in circumstances other than Rules 6.1, 6.2, 6.3 or 6.4 is entitled to a Benefit equal to the Member's Withdrawal Benefit.

**8.6 Other Circumstances**

A member shall be entitled to the whole or part of the Member's Account balance in such other circumstances as permitted by the Relevant Law.

**8.7 Pension**

Where a Member is eligible for payment of a Benefit in accordance with the Rules above, and the Member elects to receive the Benefit as a Pension, the Trustee may transfer the Member's Benefit to Division 4.<sup>87</sup>

**8.8 General**

A Member cannot receive more than one type of Benefit listed in this Rule unless permitted by the Relevant Law.

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<sup>87</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

## **Division 4 – Rules of Media Super – Pension Plans<sup>8889</sup>**

### **1. Application of Rules**

#### **1.1 Membership Criteria**

These rules apply to persons with a Superannuation Lump Sum who makes an application for membership to the Media Super Pension Plan established under Clause 3.3 of this Deed or Members who have elected to receive a Pension and have been transferred from Division 1, 2 or 3 of the Fund.<sup>9091</sup>

#### **1.2 Application of this Division**

The Membership classification, Contributions payable by and in respect of, and Benefits payable in respect of Members under this Division shall be exclusively determined in accordance with the provisions of these Rules.

### **2. Interpretation**

#### **2.1 Definitions**

In these Rules, unless otherwise defined in Clause 1 of the Deed:

- (1) **Pension Account** means the Account established under Rule 6 or Rule 12; and
- (2) **Plan** means the Media Super – Allocated Pension Plan and Account Based Pension Plan.<sup>9293</sup>

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<sup>88</sup> This heading was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>89</sup> This heading was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>90</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>91</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>92</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>93</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

### **3. Membership**

#### **3.1 Membership Classification**

- (1) There shall be one class of Membership under this Division and Members of this Division shall be designated as Pensioners PROVIDED HOWEVER the Trustee shall have the power to create such other Membership classes within this Division with such rights and entitlements as the Trustee shall determine.
- (2) An Eligible Person will become a Member of the Plan upon the acceptance by the Trustee of an application for membership in the form required in the Plan's Disclosure Document.

#### **3.2 Information**

The Member shall be required to provide such information as required in Clause 6 of this Deed.

### **4. Separate Pension**

Subject to the Relevant Law, unless the Trustee in its absolute discretion determines, notwithstanding any provisions to the contrary in this Deed and these Rules, each Contribution or other amount paid in respect of a Member of this Division shall be applied to a separate Pension Account and shall be referable to a separate Pension to be provided in respect of that Member.

### **5. Contributions**

#### **5.1 Payment of Contributions**

A Member of this Division may make the Contributions to the Division as specified in the application of that Member and with the consent of the Trustee the Member may pay additional Contributions or other amounts to the Plan. However, the Trustee may only accept Contributions in respect of the Member that can be applied under the Relevant Law to immediately pay benefits to the Member.

#### **5.2 Contributions and Other Monies**

- (1) The Trustee shall apply Contributions or other monies (including any Superannuation Lump Sum) received by or in respect of a Member to apply for Units in one or more investment options as provided by the Trustee in its Plan's Disclosure Document as selected by the Member.<sup>94</sup>

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<sup>94</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (2) The Trustee may set aside from the Contributions or other monies such amounts as required as listed Clause 15 for the payment of any Taxation, fees or other expenses.

## **6. Accounts**

### **6.1 Establishment**

- (1) The Trustee shall establish a Pension Account in respect of each Member. The Trustee may divide the Pension Accounts into sub-accounts.
- (2) Subject to the Relevant Law a Member's entitlement to Pension payments from the Member's Pension Account will commence from the date the Member's application is accepted by the Trustee and the Member's Pension Account is established.

### **6.2 Segregation of Pension Assets**

In relation to each Pension payable to a Member or a Beneficiary, the Trustee may:

- (1) segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (2) constitute the segregated assets as segregated current and non-current pension assets pursuant to the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.<sup>95</sup>

#### **6.2A Maintenance of Accounts**

The Trustee may maintain the Accounts in a way that it considers appropriate. This may include recording the value of:

- (1) any Contributions, Roll Over Payments, Shortfall Component and Superannuation Lump Sum paid into the Plan in respect of the Member;
- (2) Units issued and cancelled in respect of the Member;
- (3) any investment earnings whether positive or negative;

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<sup>95</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (4) any amount paid out of the Fund in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;
- (5) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (6) such of the costs, charges and expenses incurred in accordance with Clause 22 or an appropriate portion thereof as the Trustee may determine;
- (7) any amount of Taxation attributable to the Member or Beneficiary;
- (8) any amount of commission or brokerage payable under Clause 7.8; and
- (9) such other amounts as the Trustee shall from time to time determine and permitted by the Relevant Law.<sup>96</sup>

## **7. Pension Benefits**

- (1) The Trustee must pay a Member a Pension:
  - (a) commencing on the dates specified in the relevant Member's application which must be not later than necessary to comply with the Relevant Law;
  - (b) terminating when all Units allocated to the relevant Member's accounts have been withdrawn.
- (2) A Pension paid to a Member in this Plan must comply with all standards prescribed under the Relevant Law relating to Pensions which do not have a fixed size of benefit payment. Such standard shall be deemed to be incorporated in these Rules so long as they continue to be standards.
- (3) The capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing;
- (4) If a Member dies whilst being paid a Pension, the provisions of Rule 9 will apply.

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<sup>96</sup> This Rule titled "Maintenance of Accounts" was inserted by Deed of Variation dated 26 June 2008, effective 1 July 2008

## **8. Payment of Pension**

### **8.1 Frequency of Payment**

- (1) The Trustee must pay the Pension to a Member at the times specified in the Member's Application. A Member may change the frequency of the Pension payments if the change is approved by the Trustee and is in a form approved by the Trustee. If at any time a Pension Member has not made a selection as to the frequency of the Pension payments, the Trustee must pay the Pension annually.
- (2) If the commencement day of the Pension occurs before 1 June in the financial year then there must be an amount paid, calculated pro rata on a daily basis during that financial year.

### **8.2 Minimum Annual Payment**

For so long as the Pension is payable, the Trustee must ensure that at least one payment is made during each financial year and the Pension payments to a Member must not be smaller than the minimum prescribed limits, as set out in the Relevant Law for pension benefits.<sup>9798</sup>

### **8.3 Notification of Level of Pension Payments**

At the time a Member joins the Plan and in each 1 July, the Trustee must notify the Member of the minimum level for Pension payments for the financial year in which that date occurs. A Member may select the level of Pension payments at any time during a financial year within the minimum prescribed limits.<sup>99</sup>

### **8.4 Default Pension Level**

If during a financial year a Member fails to make a selection in relation to the level of Pension to be paid, the Trustee may continue to pay a Pension at the level specified the previous financial year or if no direction has been given in the Member's application, the Trustee may adjust the level of the Pension payable to either the minimum or the maximum in its absolute discretion or the Trustee may seek to contact the Member in order to receive its directions.

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<sup>97</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>98</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>99</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

## 8.5 Pension Increase

The Trustee shall be able to increase the Pension payable for cost of living increases in its absolute discretion provided that the increase complies with the Relevant Law.

## 8.6 Commutation

- (1) A Member may commute either whole or part of their Pension subject to the Relevant Law at any time by notifying the Trustee in writing in the approved form. The Member may specify from which investment option(s) the commutation will be made.<sup>100</sup>
- (2) If part of the Pension is commuted, the Pension payments must be recalculated and adjusted.

## 9. Death Benefit

### 9.1 Member's Nominations

- (1) A Member must notify the Trustee of the name and address of any eligible Dependant to whom the Member wishes any Reversionary Pension payable upon the Member's death to be paid.<sup>101</sup>
- (2) The nomination under this Rule:
  - (a) may be varied or replaced from time to time in the manner approved by the Trustee; and
  - (b) is not binding on the Trustee, but the Trustee may consider the nomination when exercising its discretion under the Rules of this Division.

### 9.2 Reversionary Beneficiary

After the death of the Member, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit equal to the Withdrawal Value depending on the eligibility of the relevant Dependant.<sup>102</sup>

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<sup>100</sup> This Rule was amended by Deed of Variation dated 26 June 2008, effective 1 July 2008

<sup>101</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>102</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

### 9.3 **Death of Pensioner**

In the event of the death of a Pensioner whilst there is still an amount standing to the credit of the Pension Account of the Pensioner and where no Reversionary Beneficiary has been nominated, the balance of the such Pension Account shall be dealt with in accordance with Clause 30 of this Deed PROVIDED HOWEVER that in the event that such application is not in accordance with the Relevant Law, the balance of such Pension Account shall be dealt with in accordance with the Relevant Law.<sup>103</sup>

### 10. **Pre-Retirement Non-Commutable Allocated Pensions**

Notwithstanding anything in these Rules where a Member attains his or her Preservation Age but does not retire from Gainful Employment the Trustee may offer an allocated Pension on the terms specified in these Rules except the allocated Pension cannot be commuted and cashed as an Superannuation Lump Sum unless:<sup>104</sup>

- (a) The purpose of the commutation is:
  - (i) To cash an unrestricted non-preserved Benefit; or
  - (ii) To pay a superannuation contributions surcharge; or
  - (iii) To give effect to an entitlement of a Non-Member Spouse under a family law Payment Split; or
- (b) Before commutation the Pensioner has satisfied a condition of release in respect of which the cashing restriction for preserved Benefits and restricted non-preserved Benefits is 'Nil'; or
- (c) the Relevant Law otherwise permits the Pension to be commuted.<sup>105</sup>

### 11. **Payment option**

As an alternative to paying an Allocated Pension on the basis of the above rules from 1 July 2007 a Member may elect to have the pension paid on the terms stipulated in rule 12.<sup>106</sup>

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<sup>103</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>104</sup> This Rule was amended by Deed of Variation dated 23 April 2008, effective 1 July 2007

<sup>105</sup> Rule 10 titled "Pre-Retirement Non-Commutable Allocated Pension" was inserted by Deed of Amendment dated 4 May 2006, effective 1 January 2006

<sup>106</sup> Rule 11 titled "Payment Option" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

## **12. Account Based Pension**

- 12.1 Where an Account Based Pension is payable from the Fund the following conditions shall apply to the payment of the Pension and will override any other rules of this Division to the extent of any inconsistency:
- (1) the total of any Pension payments in any year must be at least the amount required by the Relevant Law; and
  - (2) the Pension is transferable only to another person on the death of the Pensioner; and
  - (3) the capital value of the Pension and the income from it cannot be used as security for a borrowing; and
  - (4) upon the death of the Pensioner the Pension must not continue to be paid as a Pension to:
    - (a) an adult Child at least 25 years of age (unless they have a disability); or
    - (b) a Child between the ages of 18 and 24 who was not a financial dependant on the Pensioner; or
    - (c) the Legal Personal Representative of the estate of the Pensioner; and
    - (d) the Pension cannot be commuted in whole or in part except in the following circumstances:
      - (i) where the Pensioner has died; or
      - (ii) where the sole purpose of the commutation is to:
        - (A) pay a superannuation contributions surcharge; or
        - (B) give effect to an entitlement of a Non Member Spouse under a Payment Split; or
        - (C) meet the rights of a person to return a financial product under the Relevant Law; or
        - (D) where there is a partial commutation the account balance of the Pension after the commutation is equal to or greater than the minimum balance required by the Relevant Law after the commutation; or

- (E) the minimum amount required to be paid under the Relevant Law has been paid in the financial year in which the commutation takes place; and
- (F) no minimum payment of the Pension shall be required in a financial year where that Pension commences after 1 June in that financial year unless the Relevant Law otherwise requires; and
- (G) no payment by way of Contribution or by way of a Roll Over Payment shall be added to the Pension Account.<sup>107</sup>

### **13. Transition to Retirement Income Stream at Preservation Age**

13.1 Where a Member attains his or her Preservation Age but does not Retire from Gainful Employment the Trustee may offer an Account Based Pension on the terms specified in these rules except that the Account Based Pension cannot be commuted to a Superannuation Lump Sum unless:

- (1) the purpose of the commutation is:
  - (a) to cash an unrestricted non-preserved benefit; or
  - (b) to pay a superannuation contributions surcharge; or
  - (c) to give effect to an entitlement of a Non Member Spouse under a Payment Split; or
    - (i) before the commutation the Pensioner has satisfied a condition of release in respect of which the cashing restriction for Preserved Payment Benefits and restricted non-preserved benefits is nil.
    - (ii) the total Pension payments made in a financial year to a Pensioner for a Transition to Retirement Income Stream may be no more than 10% of either:
      - (A) the Pension Account balance on 1 July in the financial year in which the payment is made; or

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<sup>107</sup> This Rule titled "Account Based Pension" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007

- (B) if the relevant financial year is the year in which the Pension commences the Pension Account balance on the commencement day or such other amount as required under the Relevant Law.
- (d) These rules shall override any other rules of this Division to the extent of any inconsistency.<sup>108</sup>

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<sup>108</sup> This Rule titled "Transition to Retirement Income Stream at Preservation Age" was inserted by Deed of Variation dated 23 April 2008, effective 1 July 2007